

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

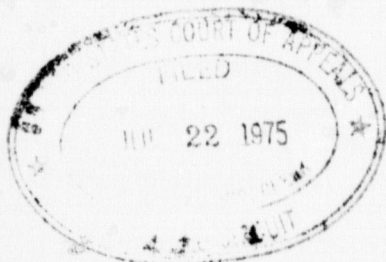
74 1504

To Be Argued By:

David J. Fine

United States Court of Appeals

For the Second Circuit



MASIA A. MUKMUK, also known as
SYLVESTER CHOLMONDELEY,

Appellant,

v.

COMMISSIONER OF THE DEPARTMENT OF
CORRECTIONAL SERVICES; J. EDWIN LaVALLEE,
Superintendent of the Clinton Correctional
Facility; VINCENT R. MANCUSI, Superintendent
of the Attica Correctional Facility;
JOHN L. ZELKER, Superintendent of the
Green Haven Correctional Facility,

Appellees.

JOINT APPENDIX

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Attorneys for Appellant
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David J. Fine
Elizabeth M. Fisher
David Rosenberg

Of Counsel

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70 CIV. 3518

Jury demand date:
Deft --- 2-23-72

D. C. Form No. 106 Rev.

TITLE OF CASE

v.

COMMISSIONER OF THE DEPARTMENT OF
CORRECTIONAL SERVICES; J. EDWIN LaVALLEE,
Superintendent of the Clinton Correctional
Facility; VINCENT R. MANCUSI, Superintendent
of the Attica Correctional Facility; JOHN L.
ZELNER, Superintendent of the Green Haven
Correctional Facility, (continued 100-11)

Defendants.

ATTORNEYS

For plaintiff:

HERMAN SCHWARTZ
77 W. Eagle St.
Buffalo N.Y.

For defendant:

Louis J. Lefkowitz, Esq. Atty. Genl. State of N.Y.
80 Centre St. NY 10013

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH.
J.S. 5 mailed	x Clerk	8/14/70	S. Fisher	15 -	
		8/18/70	U.S. Treas.		15 -
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
Vio. of Constitutional Rights	Witness fees				
Action arose at:	Depositions				

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MASIA A. MUKHUK a/k/a Sylvester Sholmondeley
~~xxxxx~~ vs. Warden, Green Haven Prison

70 CIV. 3510

DATE	PROCEEDINGS	Date Ord Judgment
Aug 14, 70	Filed complaint and issued summons.	
Aug 14-70	Filed Order to Show Cause re: Pre. Inj. Ret. 8/18/70.	
Aug 14-70	Filed Memorandum in support of motion.	
Aug 21, 70	Filed MEMO. END. on Order to Show cause filed 8-14-70 Motion is dismissed on consent and without prejudice. So Ordered. Frankel J.	
Sept. 14-70	Filed Order to Show Cause re: Pre. Inj. Ret. 9/15/70, together with affidavit in support thereof.	
Sept. 22-70	Filed Affidavit of John L. Zelker.	
Sept. 22-70	Filed Memorandum of Law of Deft in opposition to Plt's motion for pre. inj.	
Oct 21, 70	Filed stip and order that time for deft to answer the complaint be extended to 11-6-70 Mansfield J.	
Nov. 2, 70	Filed summons with marshal's ret. Served John Zelker, by p personally on 9-25-70	
Nov. 15, 70	Filed stip and order that time for deft to answer the complaint be extended to 12-10-70 Weinfield J.	
Dec. 17-70	Filed Amended Complaint for Declaratory Judgment, etc.	
Jan. 17-71	Filed ANSWER of John L. Zelker to complaint.	I.J.
May 14-71	Filed Notice of Motion re: Amend Complaint. Ret. 5/18/71, together with affidavit in support thereof.	
May 17-71	Filed Appendix to Defendant's Memorandum in opposition to Plaintiff's motion to amend complaint.	
May 17-71	Filed Defendant's Memorandum in opposition to Plt's motion to amend complaint.	
OCT 15 71	Filed ORDER that the application for the preliminary injunction is hereby denied without prejudice and that the motion for leave to file an amended complaint is hereby granted. So Ordered- Motley J. m/n	
Oct 15-71	Filed plttf's amended complaint.	
Oct 15-71	Filed plttf's memorandum of law in support of its motion to amend complaint.	
NOV 1 71	Filed Defts' Notice of motion ret. 11-9-71, to dismiss the action & to transfer the action to the USDC for So. Dist. of NY should the Court deny defts' motion to dismiss, & to extend defts' time to answer should Court deny said motions.	
NOV 1 71	Filed Defts' memorandum of law in support of motion filed this day.	
NOV 23 71	Filed Plt's memorandum in opposition to defts' motion to dismiss and for other relief.	
NOV 23 71	Filed MEMORANDUM ENDORSED on motion papers filed Nov 1 1971, "Motion denied. Settle order on notice." Brisant J.	
Dec 10-71	Filed affdvt & ORDER that time for respondent to answer the petition is enlarged to 2-16-72-Ryan, J. m/n	
Feb 16 72	Filed Defts' ANSWER to Second Amended Complaint.	LL
Feb 23 72	Filed Defts Demand for Jury Trial.	
Sept 22-72	Filed Affidavit & Notice of motion by deft. for an order purs to Rule 41B dismissing action against defts/ pm 10-9-72 in Room 906.	
Mar. 16-73	Filed Notice of Motion re: Pre. Inj. (no return date)	
Mar. 19-73	Filed Affidavit in opposition. (of Gerald Burke)	
Mar. 19-73	Filed Affidavit in opposition (of David R. Spiegel)	
Mar. 19-73	Filed Memorandum for Defts. in opposition to Plt's motion for a pre. inj.	
Mar 28-73	Filed plttf's notice of motion re: production of documents ret: 4-2-73.	
Apr. 2-73	Filed Reply Affirmation motion for preliminary injunction.	
Apr. 2-73	Filed Supplemental Affirmation of reply in motion for Pre. Inj.	
Apr. 4, 73	Filed stip and order ; Plt's. motion for discovery withdrawn. BONSAL, J.	
Apr. 4, 73	Filed MEMO END. on motion for the issuance of discovery. Respectfully referred to Magistrate Jacobs for hearing and report. LONSAL, J. (n/m)	
Apr. 4, 73	Filed affdvt. of david R. Spiegel, in opposition to plttf's. motion for discovery order.	
Apr. 20, 73	Filed MEMO: BONSAL, L. Plt. cites no authority, and the court has found none, which would permit this court to place plttf in Federal "protective custody" The motion for preliminary injunction and for the transfer to federal Court, on page 3.	

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Page 3

BONSAL, J.

AMOUNT
REPORTED
(DOCUMENT
REURNS

DATE

FILINGS - PROCEEDINGS

Contd. from page 2.

"protective custody" is denied. It is so ordered. Bonsal, J. (n/m)

Oct. 5-73 Filed Defts Affdvt & Notice of Motion for an order granting defts judgment
on pleadings, etc. 10/23/73.

Oct. 5-73 Filed Defts Affdvt of Gerald M. Burke.

Oct. 5-73 Filed Defts Memorandum of Law in support of Motion to dismiss.

Jan. 14-74 Filed MEMORANDUM #40211: Deft's move for judgment on the,
pleadings or in the alternative, for summary judgment.
Pltff. has cross moved for leave to add parties, to amend
complaint & summary judgment: Pltff's motion is denied.
Deft's may settle judgment on notice. So ordered. Bonsal, J. m/nFeb. 13-74 Filed Order that deft's motion for summary judgment is granted,
& pltff's 2nd amended complaint is dismissed. Pltff's claims
involving the restoration of good time are dismissed for
failure to exhaust his state remedies. pltff's motion to,
add parties, to amend the complaint & for summary judgment is
denied. Bonsal, J. Judgment Ent. Clerk. m/n Ent. 2-15-74Mar. 15-74 Filed pltff's notice of appeal to the USCA from order granting
deft's motion for summary judgment entered 2-13-74. Mailed
copy to David R. Spiegel, office of the Atty. General.Apr. 18-74 Filed pltff's notice of motion for leave to appeal in forma
pauperis.Apr. 18-74 Filed Memo-Endorsed on pltff's motion: Leave to appeal in
forma pauperis is granted. So ordered. Bonsal, J. m/nApril. 23-74. Filed cross motion to add parties, amend complaint, and summary judgment.
(mailed to Ct. on Oct. 30-73 but never entered on the docket until today)April 23-74 Filed affirmation in opposition to deft's motion (mailed to Ct. on Oct. 30-73
but never entered on the docket until today).April 23-74 Filed plaintiff's affirmation in opposition to deft's motion (mailed to Ct. on
Oct. 26-72 but never entered on the docket until today).April 23-74 Filed plaintiff's request for admissions under Rule 36 FRCP (mailed to Ct. on
Jan. 4-72).

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By Warren J. Freeman
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

MASIA A. MUKMUK, also known as
SYLVESTER CHOLMONDELEY,

Plaintiff, :

vs. :

JOHN L. ZELKER, Warden of Green
Haven Prison, Stormville, New York,
Defendant. :

No. 70 Civ 3518

COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTION, AND OTHER APPROPRIATE
RELIEF

Plaintiff, by his attorneys, hereby complains against
defendant as follows:

1. Plaintiff brings this action to redress violations of
his rights secured and protected by the Constitution and Laws
of the United States, by the warden and other officials of Green
Haven prison, Stormville, New York, who, at all times relevant
herein, acted under color of state law.

2. Jurisdiction is based upon 28 U.S.C. §§ 1343(3) and (4),
and 2201. The action arises under 42 U.S.C. § 1983, and the
First, Fifth, Sixth, Eighth and Fourteenth Amendments to the
United States Constitution.

3. Plaintiff, Masia A. Mukmuk, also known as Sylvester
Cholmondeley, is presently serving a sentence of fifteen to
thirty years imprisonment at Green Haven Prison, Stormville, N.Y.

4. Defendant, John L. Zelker, is the Warden of Green Haven Prison, Stormville, New York, and has custody and control over the plaintiff herein.

5. On or about February 7, 1970, plaintiff was transferred from Attica State Prison in New York to Green Haven Prison. Among plaintiff's transferred belongings were his personal writings and the following books and magazines: 13 Ebony magazines, 36 Jet Magazines, 7 Soul newspapers, 3 Negro Digests, "Che Speaks", "Dante's Hell", "African Nationalism", "History of Socialism", "The Works of Mao," "The Wretched of the Earth", "Soul on Ice" and "Last Year of Malcolm X". All of the aforesaid items were confiscated by agents of defendant Zelker and have not been returned to the plaintiff, despite his requests therefor.

6. On or about July 28, 1970, plaintiff was conducting and participating in exercise in the yard at Green Haven prison, not bothering anyone, when he was suddenly taken by agents of defendant Zelker to the prison discipline office.

7. At a summary appearance before a prison discipline officer, plaintiff was charged with teaching karate, was found guilty, and was placed in solitary confinement for an indefinite and unlimited period, where he presently remains. The shocking conditions of solitary confinement at Green Haven prison have

already been documented and are a matter of public record in this District Court, in Sostre v. Rockefeller, 68 Civ. 4053 and in Carothers v. Follette, 68 Civ. 3927

8. At no time relevant herein did defendant or his agents do any of the following:

- (a) Give plaintiff clear advance notice that the conduct he was engaged in violated a specific institutional rule;
- (b) Give plaintiff, in advance of the disciplinary hearing, a written copy of any charges made against him, citing the written rule or regulation which it is charged he has violated;
- (c) Grant plaintiff a recorded hearing before an impartial and disinterested official, where plaintiff would be able to cross examine his accusers and to call witnesses on his own behalf;
- (d) Grant plaintiff adequate opportunity to obtain counsel or a counsel substitute and to prepare a defense; or
- (e) Give plaintiff, in writing, the decision of the hearing officer setting forth the evidence on which it is based, the reasons for the decision, and the legal basis for the punishment imposed.

9. On information and belief, plaintiff alleges that defendant has permitted other prisoners at Green Haven prison to receive and retain reading materials which they desire, but that plaintiff

has been discriminated against and denied the right to receive and retain the reading materials which he desires because he is a Black Man.

10. The aforesaid actions of defendant and of his agents have violated, and continue to violate, plaintiff's rights secured and protected by the Constitution and Laws of the United States as follows:

(a) Plaintiff has been denied freedom of speech, press and religion, and Equal Protection of the Laws;

(b) Plaintiff has been denied the basic elements of procedural due process of law and fair hearing which must be afforded before substantial adverse punishment, such as indefinite solitary confinement at Green Haven prison, can be imposed;

(c) Plaintiff has been denied the right to be clearly warned in advance as to precisely what conduct is prohibited and what penalty can be inflicted for violation thereof;

(d) Plaintiff is being subjected to cruel and unusual punishment by the imposition of an extremely severe penalty, which is grossly disproportionate to the alleged infraction; and

(e) Plaintiff is being punished for engaging in exercises which are a part of his way of life, which calls for extreme discipline and fitness of mind and body, and which constitute no

proven threat to institutional discipline and security.

11. The aforesaid actions of defendant and of his agents are not justified by any legitimate, compelling state interest, and are not necessarily related to considerations of institutional security.

12. Plaintiff has no adequate remedy at law. Unless the relief requested herein is granted, plaintiff will continue to suffer irreparable injury.

WHEREFORE, plaintiff prays:

1. That the hearing of this cause be expedited;
2. That the Court grant a preliminary injunction and a final injunction against the wrongs complained of in this Complaint; Specifically, that defendant and his agents be directed to return immediately to plaintiff his personal writings, books and magazines; that defendant and his agents be directed to remove plaintiff immediately from solitary confinement for his alleged teaching of karate on or about July 28, 1970; and that defendant and his agents be restrained from imposing similar punishment upon plaintiff in the future without first affording him procedural due process of laws, and without also demonstrating, that plaintiff's actions constitute a proven threat to institutional security;

3. That the Court grant such other relief that may be just and appropriate, including an award of court costs and attorneys' fees.

1st Herman Schwartz
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1st Elizabeth M. Fisher
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New York, New York

Attorneys for Plaintiff

STATE OF NEW YORK :
COUNTY OF NEW YORK : SS. :

MASIA A. MUKMUK, also known as SYLVESTER CHOLMONDELEY,
being first duly sworn on oath, deposes and says that he has read
the foregoing Complaint, and that he knows the contents thereof
to be true and correct to the best of his knowledge and belief.

Masia A. Mukmuk (S. Cholmondeley)
Affiant

Subscribed and Sworn to before me
this 13th day of August, 1970

Elizabeth M. Fisher
Notary Public 31-1229925

My Commission expires March 30, 1971.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----:
MASIA A. MUKMUK, also known as :
SYLVESTER CHOLMONDELEY, :

Plaintiff, :

vs. :

No. 70 CIV 3518

JOHN L. ZELKER, Warden of Green Haven :
Prison, Stormville, New York, :

Defendant. :

-----:
AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT, EQUITABLE AND OTHER
APPROPRIATE RELIEF

Plaintiff, by his attorneys, hereby complains against
defendant as follows:

1. Plaintiff brings this action to redress violations of his rights secured and protected by the Constitution and Laws of the United States, by the warden and other officials of Green Haven prison, Stormville, New York, who, at all times relevant herein, acted under color of state law.
2. Jurisdiction is based upon 28 U.S.C. §§ 1343(3) and (4) and 2201. The action arises under 42 U.S.C. § 1983, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.
3. Plaintiff, Masia A. Mukmuk, also known as Sylvester Cholmondeley, is presently serving a sentence of fifteen to thirty years imprisonment at Green Haven Prison, Stormville, N.Y.
4. Defendant, John L. Zelker, is the Warden of Green Haven

Prison, Stormville, New York, and has custody and control over the plaintiff herein.

5. On or about February 7, 1970, plaintiff was transferred from Attica State Prison in New York to Green Haven Prison. Among plaintiff's transferred belongings were his personal writings and the following books and magazines: 13 Ebony magazines, 36 Jet magazines, 7 Soul newspapers, 3 Negro Digests, "Che Speaks", "Dante's Hell", "African Nationalism", "History of Socialism", "The Works of Mao", "The Wretched of the Earth", "Soul on Ice", and "Last Year of Malcolm X". All of the aforesaid items were confiscated by agents of defendant Zelker and have not been returned to the plaintiff, despite his requests therefor.

6. On or about July 17, 1970, plaintiff was kept locked in his cell for ten days for refusing to sign a mail or destroy slip for two packages of Familia, a Swiss cereal which he received in a package.

7. On or about July 28, 1970, plaintiff was conducting and participating in exercise in the yard at Green Haven Prison, not bothering anyone, when he was suddenly taken by agents of defendant Zelker to his cell and keeplocked there until the following day.

8. At a summary appearance before a prison discipline officer, plaintiff was charged with teaching karate, was found guilty, and was placed in solitary confinement for an indefinite and unlimited period, where he remained until August 18, 1970. The shocking conditions of solitary confinement at Green Haven prison have already been documented and are a matter of public record in this District Court, in Sostre v. Rockefeller, 312 F.Supp. 863 and in Carothers v. Follette, 314 F.Supp. 1014.

9. On or about August 8, 1970, plaintiff and two other inmates confined to punitive segregation were exercising in their cells in punitive segregation where they were confined twenty-

four hours a day.

10. At a summary appearance before a prison discipline officer plaintiff was charged with making noise and refusing to stop. He was found guilty as charged and penalized by the forfeiture of ten days good time.

11. On or about August 18, 1970, on the eve of a scheduled hearing on plaintiff's motion for a preliminary injunction, defendant having knowledge of the filing of the Complaint herein, and of the entry by this Court of a rule to show cause, ordered plaintiff removed from solitary confinement and returned to the general prison population.

12. On August 19, 1970, counsel for plaintiff appeared in this Court to request a preliminary injunction preventing defendant from continuing plaintiff in punitive segregation. At that time, counsel for defendant notified the Court and counsel for plaintiff that plaintiff had been removed from solitary confinement the previous day. Subsequently, an agreement was reached that in the event plaintiff is returned to segregated confinement, the warden of Green Haven prison shall give telephone notice thereof to counsel for plaintiff within six hours.

13. On August 21, 1970, plaintiff loaned a book to a new inmate and participated in exercise in the yard for a period of several hours.

14. Plaintiff was locked in his cell until August 26, 1970, when he was taken to discipline court.

15. The discipline court found plaintiff guilty of causing a disturbance in the yard, and he was penalized ten days good time. Plaintiff was also found guilty of teaching karate to another inmate; he was denied recreation privileges for fifteen days.

16. At the same hearing plaintiff refused to plead guilty or not guilty to the charges; he told the discipline court that he would not participate in their proceedings because it was a sham

and a kangaroo court. He also asked the officer in charge to release another inmate from punitive segregation where he had been since July 28, 1970, for allegedly practicing karate in the yard with plaintiff.

17. As a result of this statement to the discipline court plaintiff was again keeplocked in his cell until August 31, 1970, without notice to plaintiff's counsel.

18. On August 31, 1970, at a summary appearance before a prison discipline officer, plaintiff was found guilty of insolence because of his remarks set out in paragraph 16, and he was penalized ten days good time.

19. At the hearing on August 31, 1970, plaintiff refused to plead to the charges for the reasons set out in paragraph 16.

20. As a result of this statement to the discipline court, plaintiff was again keeplocked in his cell until September 2, 1970, without notice to plaintiff's counsel.

21. At a hearing on September 2, 1970, plaintiff was penalized fifteen days loss of recreation for his conduct during the hearing of August 31, 1970.

22. On September 3, 1970, plaintiff inadvertently missed the line to the mess hall, and when he informed the officer of this he was locked in his cell until a hearing.

23. On September 4, 1970, at a summary appearance before the prison discipline officer, plaintiff was charged with being in the exercise yard despite the fact that his yard privileges had been confiscated for fifteen days. Plaintiff denied having been in the yard. He was found guilty, and punished by a fifteen day keeplock, without notice to plaintiff's counsel.

24. On September 22, 1970, plaintiff asked the officer in charge of his cell block to give him a pass to go to the shower for his weekly shower or to the correspondence unit where he had an appointment to mail out legal papers to his attorney. He had

to do both things that day. The officer refused, and plaintiff proceeded to the correspondence unit without a pass.

25. At a discipline hearing on September 23, 1970, plaintiff was found guilty of proceeding without a pass, and he was penalized ten days of recreation privileges.

26. On October 8, 1970, plaintiff was keeplocked for allegedly practicing karate, without notice to plaintiff's counsel.

27. On October 9, 1970, at a summary discipline court plaintiff was found guilty and keeplocked for fifteen days, without notice to plaintiff's counsel.

28. On or about October 16, 1970, plaintiff was charged with cursing an officer, calling him a white pig, threatening him with bodily harm and attempting to throw a coffee jar at the officer. Plaintiff pleaded not guilty. He was found guilty, and the disposition was twenty days keeplock, consecutively to the already imposed keeplock. No notice was given to plaintiff's counsel.

29. At no time relevant herein did defendant or his agents do any of the following:

- (a) Give plaintiff clear advance notice that the conduct he was engaged in violated a specific institutional rule;
- (b) Give plaintiff, in advance of the disciplinary hearing, a written copy of any charges made against him, citing the written rule or regulation which it is charged he has violated;
- (c) Grant plaintiff a recorded hearing before an impartial and disinterested official, where plaintiff would be able to cross examine his accusers and to call witnesses on his own behalf;
- (d) Grant plaintiff adequate opportunity to obtain counsel or a counsel substitute and to prepare a defense; or
- (e) Give plaintiff, in writing, the decision of the hearing officer setting forth the evidence on which it is based, the

reasons for the decision, and the legal basis for the punishment imposed.

30.. On information and belief, plaintiff alleges that defendant has permitted other prisoners at Green Haven prison to receive and retain reading materials which they desire, ~~but that~~ plaintiff has been discriminated against and denied the right to receive and retain the reading materials which he desires because he is a Black man.

31. Upon information and belief, plaintiff alleges that defendant has permitted other prisoners to engage in physical exercises of their choice, but that plaintiff has been and is being discriminated against by the defendant and his agents.

32. Plaintiff alleges that he is being subjected to a continuing course of harrassment by defendant and his agents, to wit, confined to punitive segregation or to his cell without exercise or any freedom of movement for more than three months.

33. The aforesaid actions of defendant and of his agents have violated, and continue to violate, plaintiffs rights secured and protected by the Constitution and Laws of the United States as follows:

- (a) Plaintiff has been denied freedom of speech, press and religion, and Equal Protection of the Laws;
- (b) Plaintiff has been denied the basic elements of procedural due process of law and fair hearing which must be afforded before substantial adverse punishment, such as indefinite solitary confinement, keeplocks, or extended loss of recreational privileges, including use of the exercise yard can be imposed;
- (c) Plaintiff has been denied the right to be clearly warned in advance as to precisely what conduct is prohibited and what penalty can be inflicted for violation thereof;
- (d) Plaintiff is being subjected to cruel and unusual

punishment by the imposition of extremely severe penalties which are grossly disproportionate to the alleged infractions;

(e) Plaintiff has been subject to cruel and unusual punishment by the denial of his right to procedural and substantive due process, and by his repeated exposure to the enforcement of arbitrary and capricious rules and procedures and to the arbitrary and capricious enforcement of all rules and to arbitrary and capricious confinement to his cell not as a result of any disciplinary procedures, pending a discipline hearing;

(f) Plaintiff is being punished for engaging in exercises which are a part of his way of life, which calls for extreme discipline and fitness of mind and body, and which constitute no proven threat to institutional discipline and security;

(g) Plaintiff has been subject to cruel and unusual punishment by the denial of any freedom of movement for most of the past three and a half months.

34. The aforesaid actions of defendant and of his agents are not justified by any legitimate, compelling state interest, and are not necessarily related to considerations of institutional security.

35. Plaintiff has no adequate remedy at law. Unless the relief requested herein is granted, plaintiff will continue to suffer irreparable injury.

WHEREFORE, plaintiffs prays:

1. That the hearing of this case be expedited;
2. That the Court grant a preliminary injunction and a final injunction against the wrongs complained of in this Complaint; specifically, that defendant and his agents be directed to return immediately to plaintiff his personal writings, books and magazines; and that defendant and his

agents be restrained from imposing any punishment upon plaintiff in the future without first affording him procedural due process of law, and without also demonstrating that plaintiffs actions constitute a proven threat to institutional security; and

3. That the Court grant such other relief that may be just and appropriate, including an award of court costs and attorneys' fees.

Herman Schwartz per Etchelson
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MASIA A. MUKMUK, also known as
sylvester Cholmondelcy,

Plaintiff,

v.

COMMISSIONER OF THE DEPARTMENT OF
CORRECTIONAL SERVICES; J. EDWIN LAVALLEE,
Superintendent of the Clinton Correctional
Facility; VINCENT R. MANCUSI, Superintendent
of the Attica Correctional Facility; JOHN L.
ZELKER, Superintendent of the Green Haven
Correctional Facility,

Defendants.

AMENDED
COMPLAINT

70 Civ. 3518

Plaintiff, by his attorney, hereby complains
against the defendants as follows:

1. Plaintiff brings this action to redress violations of his rights secured and protected by the Constitution and laws of the United States, by the Commissioner of the Department of Correctional Services, by the superintendents of three of the correctional facilities and their agents, who, at all times relevant herein, acted under color of state law.
2. Jurisdiction is based upon 28 U.S.C. §§ 1343(3) and (4) and 2201. The action arises under 42 U.S.C. §1983, and the First, Sixth, Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution.
3. Plaintiff is presently serving a sentence of 15 to 30 years. He was transferred from Green Haven Correctional Facility to Clinton at the end of December, 1970.
4. Defendant Commissioner of the Department of Correctional Services is the person charged with the supervision, management and control of the correctional facilities and of all matters relating to the

government, discipline, and policing of these institutions.^{A-20}

5. The other defendants are those persons designated by the Commissioner as the Superintendents of their respective facilities, and they are charged with the supervision and management of the correctional facilities, subject only to the rules and statutory power of the Commissioner, including directing the work and defining the duties of all officers and employees.

6. Plaintiff was sentenced in Queens County Court on June 29, 1960, and he was sent to the Elmira Reception Center. He was seventeen years old. He was born on September 17, 1942.

7. On or about August, 1960, plaintiff was transferred to Auburn Prison.

8. For the period from his arrival until October, 1961, he was punished or reprimanded for minor infractions of prison rules. His activities at no time were found to constitute a threat to institutional security or discipline.

9. During the fall of 1961 plaintiff became a Black Muslim, adopting the religion of Islam as propagated by the Honorable Elijah Mohammed.

10. On or about October 3, 1961, plaintiff and some other Muslims requested that they be placed in the segregation unit with one of their coreligionists whom they thought was being punished for having the Koran and for whose safety they feared.

11. Plaintiff was told that he was to submit a request slip when he wished to return to the general population.

12. Plaintiff was then placed in the segregation unit, and he was never returned to the general population prior to his transfer to Clinton Prison on September 13, 1962.

13. As a result of this confinement plaintiff was deprived of the opportunity to earn any good time thereby reducing the amount of time he would have to serve before being eligible for parole.

14. When he was first transferred to the segregation unit plaintiff was placed in a "strip cell" for thirty days. The cell contained no furniture other than a toilet, sink, and a bed without a mattress. A mattress was provided only during the hours of six or seven in the evening until approximately eight o'clock in the morning. The cell was filthy, and at no time was plaintiff given any cleaning utensils. Toilet paper was kept outside the cell, and it was only given to the plaintiff when the guard on duty was so inclined.
15. At all times during this period in a strip cell plaintiff was fed only half-rations.
16. At all times during this period plaintiff was confined to his cell twenty-four hours a day. He was denied also all his personal effects, earphones, literature, linen for his bed, and toilet articles.
17. At all times during this period there was no light bulb in the cell.
18. Subsequently plaintiff was again placed in a strip cell for another thirty day period.
19. Plaintiff was placed for three days in a cell designated by the inmates as a "dark hole". This cell had no furniture, sink, toilet or other sanitary facilities; there was no light in the cell itself nor did light from the outside illuminate it. It was dirty and unsanitary; there was feces in the cell and a terrible odor resulting from the filth. Plaintiff was clothed only in underpants, an undershirt, and socks. At no time was he provided with any food or water or hygienic articles.
20. On or about September 13, 1962, plaintiff was transferred to Clinton Prison.
21. He was placed in the general population and he was given a job in the cotton shop.
22. On or about October 24, 1962, at Clinton Prison, plaintiff and a number of other Muslims were placed in segregation in Block E after an inquiry was made to Deputy Warden

Follette about why two Muslims who had conducted religious services in the yard were keeplocked.

23. Defendant LaVallee ordered plaintiff placed in segregation along with the other Muslims.

24. In this segregation unit plaintiff was denied the opportunity to work, to go to the messhall, to mingle with the population, to buy food at the commissary to supplement the pork free diet which the Muslim religion mandates, to receive food packages from home, to wear his own clothing instead of having to wear the same set of clothes for a week at a time while receiving a shower only once a week and being denied hot water with which to bathe.

25. Plaintiff was kept in segregation at the Clinton Prison from on or about October 23, 1962, until February 20, 1965. As a result of this confinement plaintiff lost the opportunity to earn approximately nine months good time.

26. On or about January 31, 1963, plaintiff and other prisoners similarly confined filed civil rights complaints with the United States District Court for the Northern District of New York.

27. Shortly thereafter plaintiff and other prisoners similarly confined were transferred from E block to the major segregation unit.

28. In both locations the windows were regularly opened at night and the blowers were turned on despite the extreme cold of the winters near the Canadian border.

29. Despite the extreme cold plaintiff was made to walk naked to the place where showers were taken and made to walk back to his cell afterwards without being permitted to dry himself off and without being permitted to put on any clothes.

30. Plaintiff and other Muslims in segregation were also compelled to walk in procession in a small exercise yard during the winter without adequate winter clothing and without regard for the weather.

31. On February 28, 1963, plaintiff was penalized thirty

days good time for refusing to go to the yard under the conditions described in paragraph 30.

32. Plaintiff and the other Muslims so confined suffered colds and other illnesses as a result of the conditions to which they were subject, but they never received adequate medical care or examinations.

33. Plaintiff and the other Muslims were subject to frequent searches of their property and to confiscation of items without explanation.

34. On or about May 9, 1963, plaintiff was penalized thirty days good time for writing a note to the Warden about the confiscation of his property.

35. On or about March 22, 1964, plaintiff was placed in a strip cell in the segregation unit until further notice because he was complaining about the food every day.

36. Plaintiff was then continued in a strip cell for an additional thirty days for demanding his legal books as soon as he would have been released from the strip cell.

37. On or about September 15, 1964, plaintiff was again placed in a strip cell for allegedly receiving a cigarette from a prisoner to whom he had passed a library book. He was given a thirty day sentence.

38. On or about November 30, 1964, plaintiff was placed in a strip cell for thirty days for alleged insolence.

39. On or about December 14, 1964, plaintiff was told that he would remain in a strip cell for an indefinite period of time because he was allegedly hollering that God is a black man, despite the fact that hollering is the only way of communicating with other prisoners to prevent total isolation.

40. Plaintiff was further punished for sharing food while in a strip cell. He was continued in a strip cell.

41. Plaintiff was continued in a strip cell without a break from November 30, 1964, to February 2, 1965.

42. Plaintiff had previously been in a strip cell for even longer periods of time while incarcerated at Clinton Prison, but he cannot make the times more definite at this time.

43. The conditions of the strip cell at Clinton Prison were similar to those at Auburn, as described in paragraphs fourteen, fifteen, and sixteen of the complaint.

44. In addition plaintiff was not provided with soap, towel, toothbrush, or toothpaste, even when he was in a strip cell for longer than ninety days. Plaintiff cleaned his mouth by sometimes obtaining a piece of soap and a rag from other inmates.

45. He was dressed only in a pair of longjohns.

46. He was compelled to stand at attention before his cell bars all day long.

47. He was denied dental care, i.e. filling of cavities, except for extractions.

48. Often he was given only one bowl of food a day.

49. On or about February 2, 1965, plaintiff was ordered by one of the officers who had previously filed reports against him to run and pick up his mattress and blanket. Plaintiff refused to run and walked. When he returned to his cell, this officer stuck plaintiff in the face with his night stick, breaking his front teeth and necessitating their extraction. When plaintiff defended himself, a fight ensued. Plaintiff was penalized ninety days good time.

50. On or about February 20, 1965, plaintiff was transferred to the Attica Prison. He was initially placed in population and given a job assignment.

51. On or about March 16, 1965, plaintiff was charged with insolence, and he was penalized thirty days good time.

52. As a result of alleged insolent conduct at the hearing plaintiff was placed in the segregation unit without any further hearing.

53. Plaintiff was kept in the segregation unit from March 16, 1965, until March 31, 1966.

54. During this time there were no further disciplinary reports against the plaintiff.

55. As a result of this confinement plaintiff lost the opportunity to earn approximately four months good time.

56. On or about March 31, 1966, plaintiff was transferred to Green Haven at his own request.

57. Until January, 1967, there were no disciplinary infractions of any magnitude filed against the plaintiff. His conduct in no way constituted a threat to institutional security or discipline.

58. On or about January 28, 1967, plaintiff was charged with inflammatory writings confiscated from his cell and with setting up a school for muslims. He was placed in segregation.

59. On or about February 11, 1967, plaintiff was transferred to Clinton Prison.

60. Without any disciplinary charges being placed against him he was placed in a strip cell for thirty days, under conditions similar to those described above.

61. Subsequently he was transferred to a different cell in the segregation unit, and continued there for approximately four to six months.

62. As a result of this confinement plaintiff was deprived of the opportunity to earn approximately two months good time.

63. In February, 1968, plaintiff was transferred from Clinton to Auburn Prison. At the time of the transfer plaintiff had a case pending before the Cayuga County Supreme Court.

64. Plaintiff was transferred from Auburn to Attica Prison on or about May 2, 1969.

65. While at Auburn plaintiff had advocated to the other prisoners and to the administration that a black studies program be established.

66. Upon being received at Attica Prison plaintiff was instructed to take a Stanford Achievement Test, which he declined to do, saying that unless he could take courses relating to black studies and to black men in America he did not want to go to school. As a result of this he was placed in the segregation unit from May 6, 1969, until approximately the end of January, 1970.

67. As a result of this confinement to segregation plaintiff was deprived of the opportunity to earn approximately three months good time, thereby delaying his possible parole.

68. During the time in segregation plaintiff was denied the right to be in the general population, to work, to have earphones, to buy food in the commissary, to exercise regularly.

69. On or about January 26, 1970, plaintiff was placed in the general population.

70. On or about January 31, 1970, plaintiff had permission to go to another cell block from one of the officers. Another officer told him to return to his cell, but he kept walking after explaining that he already had permission to go. The second officer came behind him, and pushed him down the stairs. He was subsequently beaten up by a number of officers. Mace was sprayed in his face. He was taken to a strip cell without being hospitalized, nor was he treated by the prison doctor.

71. Plaintiff was charged with assault and penalized 360 days of good time.

72. On October 10, 1969, plaintiff had been informed by the Prison Board that he had lost 455 days punishment time and 670 days of unearned time, and that none of this time was restored to him. He was further told that his earliest opportunity to meet with the parole board was delayed from February, 1970, until April 2, 1973.

73. On or about February 11, 1971, plaintiff was transferred to Green Haven Prison.

74. Among plaintiff's transferred belongings were his personal writings and the following books and magazines: 13 Ebony magazines, 36 Jet magazines, 7 Soul newspapers, 3 Negro Digests, "Che Speaks", "Dante's Hell", "African Nationalism", "History of Socialism", "The Works of Mao", "The Wretched of the Earth", "Soul on Ice", and "Last Year of Malcolm X". All of these items were confiscated by agents of defendant Zelker and have not been returned to the plaintiff, despite his requests therefor.

75. On or about July 17, 1970, plaintiff was kept locked in his cell for ten days for refusing to sign a mail or destroy slip for two packages of Familia, a Swiss cereal which he received in a package.

76. On or about July 28, 1970, plaintiff was conducting and participating in exercise in the yard at Green Haven Prison, and not bothering anyone, when he was suddenly taken by agents of defendant Zelker to his cell and kept locked there until the following day.

77. At a summary appearance before a prison discipline officer, plaintiff was charged with teaching karate, was found guilty and was placed in punitive segregation for an indefinite period of time, where he remained until August 18, 1970.

78. On or about August 8, 1970, plaintiff and two other inmates confined to punitive segregation were exercising in their cells in punitive segregation where they were confined twenty four hours a day.

79. At a summary appearance before a prison official plaintiff was charged with making noise and refusing to stop. He was found guilty as charged and penalized by the forfeiture of ten days good time.

80. On or about August 18, 1970, on the eve of a scheduled hearing on plaintiff's motion for a preliminary injunction, defendant having knowledge of the filing of the complaint herein, plaintiff was removed from solitary confinement and returned to the general population.

81. On August 19, 1970, counsel for plaintiff appeared in Court to request a preliminary injunction preventing defendant from continuing plaintiff in punitive segregation. At that time counsel for defendant notified the Court that plaintiff had been removed from segregation the previous day. Subsequently, an agreement was reached that in the event plaintiff is returned to segregation the warden would notify counsel for plaintiff within six hours.

82. On August 21, 1970, plaintiff lent a book to a new inmate and participated in exercise in the yard for a period of several hours.

83. Plaintiff was locked in his cell until August 26, 1970, when he was taken to discipline court.

84. The discipline court found plaintiff guilty of causing a disturbance in the yard, and he was penalized ten days good time. Plaintiff was also found guilty of teaching karate to another inmate; he was denied recreation privileges for fifteen days.

85. At the same hearing plaintiff refused to plead guilty or not guilty to the charges; he told the discipline court that he would not participate in their proceedings because it was a sham and a kangaroo court. He also asked the officer in charge to release another inmate from punitive segregation where he had been since July 28, 1970, for allegedly practicing karate in the yard with plaintiff.

86. As a result of these statements to the discipline court plaintiff was again keeplocked in his cell until August 31, 1970.

87. On August 31, 1970, at a summary appearance before a prison discipline officer, plaintiff was found guilty of insolence because of his remarks set out in paragraph eighty five, and he was penalized ten days good time.

88. At the hearing on August 31, 1970, plaintiff refused to plead to the charges for the reasons set out in paragraph eighty five.

89. As a result of this statement to the discipline court, plaintiff was again keeplocked in his cell until September 2, 1970.

90. At a hearing on September 2, 1970, plaintiff was penalized fifteen days loss of recreation for his conduct during the hearing of August 31, 1970.

91. On September 3, 1970, plaintiff inadvertently missed the line to the mess hall, and when he informed the officer of this fact he was locked in his cell until a hearing.

92. On September 4, 1970, at a summary appearance before the prison discipline officer, plaintiff was charged with being in the exercise yard despite the fact that his yard privileges had been confiscated for fifteen days. Plaintiff denied having been in the yard. He was found guilty, and punished by a fifteen day keeplock.

93. On September 22, 1970, plaintiff asked the officer in charge of his cell block to give him a pass to go to the shower for his weekly shower or to the correspondence unit where he had an appointment to mail out legal papers to his attorney. He had to do both things that day. The officer refused, and plaintiff proceeded to the correspondence unit without a pass.

94. At a discipline hearing on September 23, 1970, plaintiff was found guilty of proceeding without a pass, and he was penalized ten days of recreation privileges.

95. On October 8, 1970, plaintiff was keeplocked for practicing karate.

96. On October 9, 1970, at a summary discipline court proceeding plaintiff was found guilty and keeplocked for fifteen days.

97. On or about October 16, 1970, plaintiff was charged with cursing an officer, calling him a white pig, threatening him with bodily harm and attempting to throw a coffee jar at the officer. Plaintiff pleaded not guilty. He was found guilty, and

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the disposition was twenty days keeplock, consecutively to the already imposed keeplock.

98. On October 30, 1970, and on November 3, 1970, while still keeplocked, plaintiff was accused of threatening an officer and of using profanity.

99. Plaintiff denied the conduct with which he was charged in paragraph ninety eight. Plaintiff has not used profanity since he became a Muslim in 1961. Moreover, at the time of these alleged incidents plaintiff was engaged in a fast, which continued from October 24, 1970, to November 4, 1970. As a result of the fast he was deeply withdrawn and did not take part in the outside world.

100. Pursuant to the new regulations propagated October 19, 1970, the matter was first presented to an adjustment committee, which recommended that Superintendent's Proceedings be initiated.

101. Pending the Superintendent's Proceedings plaintiff was continued in keeplock.

102. Pursuant to the new regulations, plaintiff was served with written charges based on the incidents which allegedly occurred on October 30, 1970, and November 3, 1970, and he was assigned a counsel substitute.

103. On or about November 20, 1970, plaintiff was called before an agent of Warden Zelker. He was advised that the officer who was assigned to represent him was not available. He told the hearing officer that he wished to have witnesses called or at least interviewed on his behalf. He was told that he was being placed in "little segregation", A Block, and that another officer would be assigned to his case.

104. The officer who was assigned to assist him came to see him on one occasion and advised him to mend his ways.

105. Plaintiff was never recalled for the purposes of a hearing, nor were his witnesses interviewed.

106. Upon information and belief, plaintiff was given a sentence of thirty days in "little segregation", also known as "readjustment company".

107. Pursuant to the new regulations, plaintiff was entitled to be notified in writing of the disposition of the proceedings. He was not notified.

108. On December 3, 1970, an agent of the Superintendent told him that he could move back to population, and that he would be assigned to D block. Plaintiff asked for another assignment because that was where the incidents of October 15, 1970, October 30, 1970, and November 3, 1970, allegedly occurred. He was told that he would be given a different cell assignment the following week.

109. However, a notation was made on his record, upon information and belief, that he had refused his cell assignment and that he would be continued in the "Readjustment Committee" for an additional thirty days.

110. On or about December 29, 1970, plaintiff was transferred to the Clinton Correctional Facility, Dannemora, New York, which is approximately eight hours driving time from the City of New York.

111. Upon his arrival, he was placed in a keeplock on the "E6 Readjustment Company", without any disciplinary proceedings or charges against him.

112. Several days later he was placed in segregation, and charged with insolence to the deputy warden at an initial interview and for making a remark to an officer who addressed him as "boy" and "stringbean". He remained in segregation for more than a month.

113. On March 10, 1971, plaintiff was advised that some clothing taken from him in January and mailed to his family had been returned to the prison. He was advised that it was going to be destroyed, despite its value to him.

114. On March 26, 1971, plaintiff was keeplocked in his cell.

115. On April 2, 1971, he appeared before a Deputy Warden at a Superintendent's proceeding. He was charged with having in

his possession literature of a revolutionary and inflammatory nature, without a satisfactory explanation for having same. This material, according to the formal charge, consisted of a twelve point platform of the black demands in prison, and the definitions, goals, and methods of operation of several Black Movement organizations; he was also charged with possession of a code to transmit messages without censorship. Plaintiff was given a punishment of time served.

116. Upon information and belief, plaintiff alleges that other inmates were allowed to practice their religion without persecution.

117. Plaintiff alleges that he was kept in the segregation unit at Auburn Prison for approximately a year, because he was and continued to be a practicing Black Muslim.

118. Plaintiff alleges that he was kept in the segregation unit at Clinton Prison for approximately two and a half years, because he was and continued to be a practicing Black Muslim.

119. Plaintiff alleges that he was placed in the segregation unit at Green Haven Prison and subsequently at Clinton Prison for more than six months because of his political beliefs.

120. Plaintiff alleges that other prisoners are permitted to receive and retain reading materials which they desire, but that plaintiff is discriminated against and denied the right to receive and retain reading materials which he desires because he is a Black Man.

121. Upon information and belief, plaintiff alleges that other inmates have been permitted to engage in physical exercise of their choice, but that plaintiff has been discriminated against.

122. Plaintiff alleges that he has been and is being subjected to a continuing course of harrassment, for most of the last ten years, because he has attempted to exercise his constitutional rights and because he has refused to acknowledge his keepers as his masters.

123. The aforesaid actions of defendants and their agents have violated, and continue to violate, plaintiff's rights secured and protected by the Constitution and Laws of the United States as follows:

(a) Plaintiff has been denied freedom of speech, press, religion, and political belief;

(b) Plaintiff has been denied the basic elements of procedural due process of law and fundamental fairness in all the disciplinary proceedings to which he has been subject;

(c) Plaintiff has been subjected to cruel and unusual punishment by being confined to a strip cell under the conditions described above for long periods of time;

(d) Plaintiff has been subjected to cruel and unusual punishment by being punished for exercising his constitutional rights;

(e) Plaintiff has been subjected to cruel and unusual punishment by being punished for matters which constituted no offense pursuant to prison regulations or in accordance with reasonable standards;

(f) Plaintiff has been subjected to cruel and unusual punishment by being punished by the imposition of extremely severe penalties which are grossly disproportionate to the alleged infractions;

(g) Plaintiff has been subjected to cruel and unusual punishment by being subjected to arbitrary and capricious conduct over the course of ten years;

(h) Plaintiff has been subjected to cruel and unusual punishment, because he has refused to acknowledge the moral and racial superiority of his keepers, a position to which he is entitled by the thirteenth amendment of the United States Constitution, and by the fourteenth amendment also.

124. The conduct of the defendants in their treatment of plaintiff has never been justified by any legitimate, compelling state interest, and are not necessarily related to considerations of institutional security.

125. Plaintiff has no adequate remedy at law. Unless the relief requested herein is granted, plaintiff will continue to suffer irreparable injury.

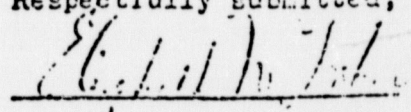
126. Plaintiff has no adequate remedy in the State Courts. There is no one Court in which plaintiff can obtain both injunctive and monetary relief. Moreover, plaintiff has already attempted to litigate his case in the New York State Supreme Court, Albany County, Special Term, in 1967. He was never able to obtain a hearing, because he was transferred to another prison.

WHEREFORE, Plaintiff prays:

1. That the hearing of this case be expedited;
2. That the Court grant a preliminary injunction and a final injunction against the wrongs complained of in this Complaint; specifically, that defendants and their agents be enjoined from punishing plaintiff because of his political or religious beliefs, because he refuses to acknowledge their moral and racial superiority, or because he chooses to engage in exercises of his choice
3. That the Court grant a declaratory judgment that plaintiff has been wrongfully punished in violation of his constitutional rights and that he has been wrongfully deprived of the opportunity to earn good time and of good time which he did in fact earn.
4. That the Court award damages in the sum of one hundred thousand (\$100,000.00) Dollars to the plaintiff for the cruel and unusual punishment to which he has been subjected.
5. That the Court award plaintiff's attorney counsel fees and court costs.
6. That the Court grant such other and further relief as it may deem just in these premises.

Dated: April 14, 1971

Respectfully submitted,


Elizabeth M. Fisher, Esq.
17 West 94th Street
New York, New York 10025
212-866-9600

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MASIA A. MUKNUK, also known as :
SYLVESTER CHOLMONDELEY, :

Plaintiff, :

v. :

SECOND AMENDED
COMPLAINT

PAUL D. MCGINNIS, RUSSELL G. OSWALD, : 70 Civ. 3518
PETER PREISER, ROBERT E. MURPHY, : DBB
J. EDWIN LAVALLEE, DANIEL MCMANN, :
WILKINS, VINCENT MANCUSI, :
JOHN L. ZELKER, :

Defendants. :

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Plaintiff, by his attorney, hereby complains against
the defendants as follows:

1. Plaintiff brings this action to redress violations of his rights secured and protected by the Constitution and laws of the United States by the Commissioners of the Department of Correctional Services and by the superintendents of the various facilities to which plaintiff has been confined, who at all times relevant herein acted under color of state law.

2. Jurisdiction is based upon 28 U.S.C. §§ 1343(3) and (4) and 2201. The action arises under 42 U.S.C. § 1983, and the FIRST, SIXTH, EIGHTH, THIRTEENTH AND FOURTEENTH amendments to the United States Constitution.

3. Plaintiff is presently serving a sentence of 10 to 20 years imposed on June 29, 1960, by a Queens County Court and modified by the Appellate Division, Second Department, in 1972. He is now confined to the Great Meadow Correctional Facility, located in Comstock, New York.

4. Defendants McGinnis, Oswald, and Preiser have been the successive Commissioners of the Department of Correction, now known as the Department of Correctional Services, and each has been charged with the superintendence, management, regulation and control of the facilities and of all matters

relating to the government, discipline and policing of these institutions. Commissioner McGinnis was in charge from the beginning of plaintiff's incarceration until 1971. He was responsible for promulgating a statewide policy concerning the treatment of Black Muslims, which resulted in their being singled out for extensive confinement to segregation and other special policing and harrassment.

5. The others defendants are or were persons designated by the Commissioners as the superintendents of their respective facilities:

- a. Robert E. Murphy, Warden, Auburn Prison, during plaintiff's confinement there from August, 1960, to September, 1962;
- b. J. Edwin LaVallee, Warden, Clinton Prison, November 26, 1958 to January 15, 1964 and January 15, 1964 to present;
- c. Daniel E. McMann, Warden, Clinton Prison, January 15, 1964, to January, 1968 and Warden, Auburn Prison, January, 1968, through May, 1969, when plaintiff was transferred to Attica Prison;
- d. _____ Wilkins, Warden, Attica Prison, period including February, 1965, until September 23, 1965;
- e. Vincent Mancusi, Warden, Attica Prison, September 23, 1965, to March 29, 1972;
- f. John L. Zelker, Warden, Green Haven Prison, June 11, 1970, to March 29, 1972.

AUBURN PRISON

6. On September 20, 1960, plaintiff was transferred from the Elmira Reception Center to Auburn Prison. From the period of his arrival until October, 1961, he was punished for only minor infractions of the rules.

7. During the Fall of 1961 plaintiff became a Black Muslim adopting the religion of Islam as propagated by the Honorable Elijah Muhammad.

8. On October 2, 1961, Herbert Blyden, a Muslim, was taken to the segregation unit and placed in a strip cell without any disciplinary proceeding. On October 3rd plaintiff

and some other Muslims remained in their cells and asked to speak to the Warden about Blyden. Plaintiff and some of the others were transferred to the segregation unit and then given the choice of remaining there or of returning to the general population without any charges being placed against them. Plaintiff and a number of other inmates elected to remain in segregation with Blyden.

9. On October 18, 1961, Herbert Blyden was released to the general population charged with having another inmate's legal papers in his possession, for which he received a reprimand. On the same day plaintiff and the others who had remained in segregation were no longer given a choice of returning to the general population; they were sentenced to segregation indefinitely, lost thirty days good time, and commissary privileges until further notice. "Good Time" is time earned by an inmate at the rate of ten days a month. From 1960 to 1970 this time was deducted from an inmate's minimum sentence to determine when he would be eligible to make his first appearance before the Parole Board. Under the regulations in effect from 1960 to October, 1970, an inmate could lose his good time as punishment in a disciplinary proceeding and he could not earn any good time while confined to his cell under "keeplock" or to segregation, regardless of his behavior there.

10. Plaintiff was placed in a strip cell from October 3, 1961, to November 2, 1961: a regularly sized cell containing a bed frame, toilet and sink with only cold water, but without a desk or stool; a mattress and blanket were provided only between 7 p.m. and 8 a.m. Plaintiff had no personal effects in his cell, including books, writing materials, legal papers and clothing; toilet articles, including toilet paper, were available only when correction officers were available and felt inclined to pass them to the inmate from the window sill. The cell was filthy and plaintiff was not provided with any cleaning implements, other than rags. A change of

clothes and a shower were available only once a week. At no other time, except for disciplinary hearings, did plaintiff leave his cell, because there was no exercise. Plaintiff was not allowed any diversions to pass the time, e.g., books, legal work, pencil and paper, or earphones; nor was he allowed to have a watch, clock or calendar to record the passage of time. Reduced portions of food were served in the cells, and plaintiff, a Muslim, had to abstain from meals containing pork. No dietary supplement was provided by the institution and he was not allowed to buy additional food from the commissary or to receive food packages from his family. Plaintiff was allowed to write to his family once a week, but he could not tell them about his predicament because this was considered institutional news and not permitted to leave the prison.

11. Plaintiff and several other Muslims involved in the incident of October 3, 1961, remained confined to the segregation unit until the fall of 1962. Their original confinement to segregation was without any time limit and at no time was plaintiff interviewed for possible return to the general population. This long term confinement was in accordance with a policy of the Commissioner encouraging the isolation of Black Muslims from the general population. Plaintiff had the distinct impression that he would be returned to the general population if he promised not to be a Muslim anymore.

12. Most of the time from November until his transfer to Clinton Prison on September 13, 1962, plaintiff was confined to a regular segregation cell. There he remained locked in his cell all the time except for a weekly shower and for daily exercise periods. He was not permitted to attend school, even though he had only third grade skills, nor was he allowed to work and earn money with which to buy food items from the commissary to supplement his diet. He was denied the freedom of movement of the general population and participation in the diversions available there. In addition, plaintiff, age 18 and still growing, was hungry all the time.

13. In addition to the burdens of close confinement, hunger and boredom, plaintiff had the additional psychological burden of knowing that he had been tricked into going to segregation: he had been told at the initial interview that he could go back to population at any time.

14. Plaintiff was further punished for expressing his opinion about certain procedures to the guards. He was "keeplocked" from December 3 to 9, 1961, and from March 17 to 26, 1962. "Keeplock" means that an inmate cannot leave his cell except for a shower and that, therefore, he is confined 24 hours a day. In both of these instances plaintiff was keeplocked pending disciplinary hearings, at which time he received only reprimands.

15. Plaintiff was also punished for expressing his opinion to other Muslims in the recreation yard: on February 8, 1962, plaintiff was charged with "agitating and inciting revolt against whites" when he was overheard telling them that "they ought to break away from whites and so-called white supremacy." He was keeplocked for six days waiting for a disciplinary hearing, placed in a strip cell under the conditions described above in paragraph 10 for eight days, and forfeited 30 days "good time."

16. Plaintiff was punished for alleged infractions which were not a violation of any known rule or of any rational policy uniformly enforced:

a. On October 18, 1961, plaintiff lost 10 days "good time" because his property transferred with him to segregation contained two state issued shirts with the sleeves cut off. In the summer this is what the entire inmate prison population wore and no one was punished for this; in fact, these shirts were issued to plaintiff by the state clothing shop with the alterations.

b. On March 21, 1962, plaintiff was punished for wearing a homemade hat with a Muslim emblem on it when he came out of his cell to get some water and for refusing to hand it to an

officer who asked for it. Upon information and belief, there was no regulation against this. Plaintiff was keeplocked for five days and 20 days "good time" was taken from him, a disproportionate punishment.

17. Plaintiff was punished along with some other Muslim inmates for objecting to the fact that some of the guards refused to address them by name and called them "hey you" when it was time to leave the recreation yard. They had been in segregation for more than nine months and the officers on duty knew their names; the inmates considered this to be disrespectful and degrading. For not answering plaintiff was keeplocked for six days before receiving a reprimand. On May 18, 1962, the same thing occurred again, and, in addition, rather than asking plaintiff to take off his hat so that it could be searched for contraband an officer tried to frisk his hat while he was wearing it, something the Muslims had objected to before and something which most officers did not do. Plaintiff was penalized for this, despite the fact that the Deputy Warden agreed with the inmates that they should be addressed by name and he immediately issued orders changing the policy.

18. Plaintiff was subjected to harrassment by certain of the guards filing ridiculous charges and this was ratified by the officials who punished him. The same guard who had pressed charges against plaintiff for the homemade hat incident and the yard incident on May 18, 1962, wrote him up the next day for throwing his lunch food ration, chop suey with pork, in the toilet.

19. As a result of the charge of throwing his lunch in the toilet, a common practice in the segregation unit for food containing pork and for leftovers, plaintiff's noon meal was suspended until further notice without any disciplinary hearing.

20. Furthermore, on May 23, 1962, apparently for having thrown his chop suey in the toilet while keeplocked for the incident in the yard and without a disciplinary hearing,

plaintiff was placed in a "prison cell", also known as a "dark cell" for three days. This is a cell from which all light is excluded and that has no furniture and no sink or toilet. Plaintiff was dressed in long underwear and provided only with a soiled pallet and a raggedly thin stinking blanket. He did not have any toilet articles nor did he have even a place to relieve himself. Plaintiff refused all meals offered to him while confined there, only small portions served in filthy bowls, because the stench from general filth and decaying excrement and urine not cleaned from the cell after the last occupant had left was nauseating, especially in such close quarters without ventilation. In addition, plaintiff was not advised that a bucket would be provided upon request. He was not given any water during these three days.

21. On May 26, 1962, plaintiff was taken to a disciplinary proceeding where he was found guilty as charged of both offenses and given a total of 20 days keeplock and penalized 60 days "good time".

22. Plaintiff had no other disciplinary proceedings while at Auburn, but he was, nevertheless, confined to segregation until his transfer to Clinton Prison on September 13, 1962.

CLINTON PRISON

23. Upon his arrival he was placed in the general population and was given a job in the cotton shop. During his free time he and some other Muslims gathered on a small area of the recreation yard called a "court" and peacefully discussed and practiced their religion and shared their food from the commissary and from packages. Because they were not allowed to obtain literature concerning Islam as propagated by the Honorable Elijah Muhammad from outside sources, they studied from handwritten lessons passed from one inmate to another and were taught by inmates who knew more than they did.

24. The purposes of this group at Clinton were entirely peaceful: they were dedicated to the worship of Allah as propounded by the Honorable Elijah Muhammad and to self-betterment to the greater glory of Allah. To realize these goals in an orderly fashion certain rules were adopted to govern the individual's and the group's conduct, with the understanding that all institutional rules were to be obeyed without question. Many of their rules were designed to eliminate from their group the problems that plague prison life: drinking, drugs, smoking, gambling, homosexuality, fighting and homosexuality. They did not eat pork, use profane language, speak disrespectfully of women, spend their time being lazy, read worthless books, or engage in idle conversation. They were supposed to work while in prison, to study to improve themselves, to seek knowledge, to exercise regularly and to maintain themselves and their cells in a clean and tidy fashion. (EXHIBIT 1)

25. By order of the Commissioner, defendant McGinnis, however, their religion was not recognized and everything was done to discourage its participants and to quash it: they were not allowed to gather for religious meetings; they were not allowed to communicate with the Honorable Elijah Muhammad or to receive books or newspapers relating to their religion, or to obtain the services of any of his ministers.

26. In addition, orders from Albany stated that no inmate was permitted to have any material pertaining to the Black Muslim movement; it was automatically contraband and subject to confiscation.

27. On October 24, 1962, several guards approached the "court" where the Muslims were gathered and asked the inmate speaking to the others to hand over the material he was reading (EXHIBIT 1). He and another inmate who was in charge of the court were then escorted to their cells and moved to E Block Segregation. Ned Hines was penalized 180 days good time for contraband literature and sentenced to segregation. Samuel X. Williams was placed in segregation for permitting contraband literature on his court.

28. On October 25, 1962, about 14 of the Muslim inmates who had been gathered on the court at the time of the above incident approached the sergeant's booth in the yard and asked to speak to him about the keeplocking of Hines and Williams and the taking of their rules and regulations, and to say that if Hines and Williams had broken any institutional rules so had they and they should share in the punishment. The plaintiff and the other inmates were completely orderly, lining up to speak to the sergeant one at a time as he requested; no incident of resisting being taken to their cells was reported in the Interdepartmental Communications (EXHIBIT 2).

29. These reports, however, allege the violation of two institutional rules: "gathering in such a large number on the handball court with one of their number apparently issuing instructions" and "approaching the immediate area of the sergeant's post, in a group, without first requesting permission." Neither of these rules had been told to the inmates before hand nor were they posted in the yard.

30. The warden interviewed some of the participants, including plaintiff, that day before they were placed in segregation. (EXHIBIT 3). The inmates were charged with violations of these two seemingly technical rules; they were instead charged with "creating a serious disturbance in the yard and taking part in a mass protest against the administration," for which they were placed in segregation and forfeited 90 days "good time". Plaintiff forfeited thirty days more for allegedly resisting an officer and refusing to obey direct orders, an incident which he says never occurred, and he was penalized another 30 days for having contraband literature in his cell, i.e., writings concerning the Muslim religion. *

31. Plaintiff and the other Muslims were placed in E Block, an extension of the segregation unit. They were confined to their cells, except for a mandatory exercise period when they were compelled to walk in a circle in the E Block yard

regardless of the weather and without adequate winter clothing. On January 25, 1963, plaintiff refused to go to the yard, and he was denied commissary privileges for 60 days. The temperatures on that day ranged from -3 to 12 degrees. Again on February 28, 1963, plaintiff who had a frostbitten foot from the day before when temperatures ranged from -4 to 22 degrees refused to go to the yard; he was penalized 30 days "good time." On all other occasions plaintiff went to the yard with the other inmates despite the extreme cold, resulting in discomfort, pain, psychological suffering, and illness, for which he did not receive proper medication or adequate medical attention. (EXHIBIT 4).

32. E Block segregation unit was located on the ground floor of the building, which was the coldest part, and the windows were regularly opened by officers to increase the suffering of the inmates.

33. As mentioned above, the food was inadequate, especially for a Muslim who abstained from pork. Christmas packages were returned to plaintiff's family, and for much of the time his commissary privileges were forfeited.

34. While in this unit and in the regular segregation unit plaintiff was subject to the loss of freedom of the general population; he was not allowed to work or to go to school or to earn any good time.

35. While in E Block segregation plaintiff and other Muslims similarly situated filed complaints with the United States District Court for the Northern District alleging a violation of the Constitutional Rights because they were Muslims; they were not allowed to practice their religion and they were subject to harassment and confinement to segregation because they were Muslims (EXHIBIT 5). Answering papers were served on the plaintiff on April 4, 1963, and eight days later plaintiff was transferred to the major segregation unit by order of the Deputy Warden without any disciplinary proceeding.

36. When the Attorney General filed his answer with the Court he attached a copy of a Brotherhood Agreement admittedly confiscated from an entirely separate group of inmates at Clinton in 1959 (EXHIBIT 6- at 6, exhibit B); this was different in tone and content from the papers confiscated from Ned Hines on October 24, 1962, copies of which had been forwarded by the Warden to the Commissioner. Plaintiff and other inmates drafted a reply to the Court pointing out that these papers had not been confiscated from them and that they were not familiar with them and that their rules and regulations had been confiscated by the prison. None of these replies were ever received by the District Court.

37. Upon his transfer to the regular segregation unit plaintiff's personal property was again searched and his copy of his complaint and reply as well as the answer were confiscated along with some other writings. On May 8, 1963, plaintiff wrote a respectful note to the warden asking why his property had been confiscated; 30 days "good time" was taken for this.

38. Because his copy of the civil rights complaint had been confiscated, plaintiff borrowed someone else's papers to make a copy for his own use and to use in conjunction with books from the law library at the institution. On August 26, 1963, he was charged with having legal papers not his own and he lost his yard privileges for 60 days, meaning that he would be confined to his cell 24 hours a day. On October 8, 1963, plaintiff was dropped from use of the law library facilities.

39. Despite the fact that plaintiff had no disciplinary infractions between August 26, 1963, and March 22, 1964, he was never interviewed for a possible return to the general population. This was in keeping with Commissioner McGinnis's policy of isolating practicing Muslims from the general population; according to plaintiff, only when an inmate agreed not to be a Muslim any more was he allowed to return to the general population.

40. On March 22, 1964, plaintiff was placed in B 4 for an indefinite period of time for complaining about his food ration every day. In the segregation unit all meals were eaten in one's cell; they were served by officers who placed the rations in a bowl which was collected along with the utensils at the end of the meal. Frequently the food was served in dirty bowls and the coffee in greasy cups; the officers did not wear gloves and in handing the food to the inmates frequently their fingers went in the food. The amount served depended on the officer on duty and on his mood; this also determined whether pork products would be deliberately mixed with food Muslims could eat. In segregation plaintiff did not have the money to supplement his diet with purchases of food from the commissary nor did his family have the money to send him packages very often; nevertheless, plaintiff was not allowed extra bread, vegetables, or milk to supplement his diet; fresh fruit was rarely served; some officers withheld even the pastry that was supposed to be part of plaintiff's diet. One of the officers regularly assigned to segregation served food while smoking a cigar and coughing. To the best of plaintiff's recollection, while in B4 he was fed only bread and water for several weeks.

41. B4 was a part of the segregation unit containing 12 cells, nos. 37 to 48. The cells were used for punishing inmates already confined to segregation as well as for punishing inmates just transferred to segregation. All of the cells except one contained a sink and toilet, but no stool, chair, desk or table. Confinement was for 24 hours a day with no exercise permitted. Plaintiff was dressed only in longjohns and socks, changed once a week.

42. The inmate was not permitted to have anything in his cell. Toilet paper, toothbrush and toothpaste, soap and a towel were kept on a window sill outside the cell and beyond the inmates's reach. They were available only when a guard felt like passing it; often the guards would not give it to plaintiff.

43. Inmates were not allowed to have any books, magazines, papers, personal writings, legal or religious matters. They were given a pencil and paper only on Sunday when they were allowed to write one letter. Plaintiff again had no means of even keeping track of the passage of time.

44. In §4 inmates had to be standing at attention at their bars whenever a guard or other personnel passed the cell from 8 a.m. to 7 p.m. Because no notice was given of the approach of a guard this amounted to standing at attention all day; and since the inmates didn't know what time it was they had to continue doing this until the guard told them to stop.

45. During the winter months windows were frequently opened during cold days to harass the inmates and to increase punishment.

46. The cell was filthy. It was not cleaned between occupants, nor was the bedding, and plaintiff was not given a broom, mop, bucket of soapy water, toilet brush or disinfectant to clean his cell.

47. The regular diet in segregation was bad, but it was even more inadequate in §4: smaller portions were served and inmates were not allowed to buy anything from the commissary or to receive packages from home and they could not even share another inmate's food.

48. Plaintiff remained in §4 until April 27, 1964, under the conditions alleged above. On the way back to his regular cell plaintiff asked for his legal materials immediately. He was charged with demanding personal services and arrogance; he was returned to §4 for another thirty days.

49. On July 8, 1964, plaintiff was charged with destroying a state issued toothbrush. He lost 30 days of yard privileges, the equivalent of a 30 day keeplock because this meant that he was confined to his cell 24 hours a day. His state issued toothbrush had broken accidentally when he was shaking it dry; the size used by a small child, it had broken when it hit the sink. The officer had not seen this happen.

Plaintiff was then issued a used worn toothbrush with toothpaste caked between the bristles; when he protested he was given charges of insolence and arrogance.

49. On or about September 15, 1964, plaintiff was put back in 84 for another 30 days for passing property, a book and tobacco between two inmates. This was a common practice among men who lived in a cell 23 or 24 hours a day, and it was permitted by most of the officers on duty. It was up to the individual officer to decide when and against whom to enforce any particular written or unwritten or previously unannounced rule. The institution ratified these reports by punishing.

50. On October 11, 1964, plaintiff was again penalized for an act which he had been doing regularly since 1962 and which he had never been told not to do and for which he had never been penalized. Having started a letter on regularly issued prison stationery and having made several mistakes, plaintiff tore up the piece of paper and flushed it down the toilet. He was penalized by 60 days loss of commissary privileges.

51. On November 30, 1964, plaintiff was accused of "insolence in handing over his eating utensils" by a guard who frequently harrassed the inmates in segregation. Plaintiff had not done anything. As a result of these charges, however, he was once again placed in 84 for 30 days.

52. However, he remained there without respite until February 20, 1965, when he was transferred to Attica.

53. During this time he was frequently written up by the same guard and his partner who had written him up in July for passing a book and for insolence on November 30, 1964:

a. On December 14, 1964, he was charged with "preaching and raving that the black man is right in believing that God is a Black Man, Moses was black and all his prophets were black." He was found guilty and his punishment was to remain in 84 indefinitely.

b. On December 15, 1964, as a result of this incident, plaintiff was referred for a possible psychiatric evaluation

and referral to Dannemora State Hospital for the Criminally Insane based on the facts stated above and the fact that plaintiff was alleged to have been very moody and staring at the officer with hatred.

c. At Christmas Time the inmates on 84 were allowed to receive a small package of holiday food from the Catholic Chaplain. Plaintiff was disciplined for sharing part of his package with another inmate; as part of his punishment his mattress and blanket were removed from his cell from 7 a.m. to 7 p.m.

d. On February 2, 1965, plaintiff was hit in the mouth by one of these officers, because he would not run to pick up his mattress and blanket; plaintiff defended himself and was then beaten by four other guards. He lost 90 days "good time".

54. As a result of having his mattress and blanket removed plaintiff, dressed only in thin longjohns and raggedy socks, was even more exposed to the cold from the outside, especially when the officers opened the windows, and particularly these two officers. During this time it was extremely cold. For example, in January, 1965, the maximum temperature was above freezing on only 3 days (34, 55, 33 degrees); on one day the highest temperature recorded was -11 degrees. All during this time plaintiff remained standing at attention all day until he was allowed to get his mattress and blanket. Although this was scheduled to happen at 7 p.m. plaintiff had no way of knowing what time it was, and on the day of the alleged assault plaintiff was not given his mattress until 8:55 p.m.

55. Even when plaintiff was scheduled for transfer to Attica Prison, he was subjected to additional harrassment and mental anguish. He was taken from his cell and put into an observation cell in the hospital; he was left with the distinct impression that he was being transferred to the State Hospital for the Criminally Insane.

56. By the time he was transferred plaintiff had been segregated from the general population for 28 months;

he had been confined to one cell without exercise for probably a year; and he had spent at least 170 days in §4, 81 days consecutively.

ATTICA PRISON

57. On February 20, 1965, plaintiff arrived at Attica Prison where he was placed in the general population and he was enrolled in school. In 1960 at Elmira Reception Center plaintiff had been tested and found to have only third grade skills.

58. On February 26, 1965, after almost 3½ years confinement to segregation, plaintiff was charged with loitering in the school corridor for 5 minutes. Although plaintiff explained that he had stayed after class to talk to a teacher, he was reprimanded and taken out of school. He was assigned to the textile shop.

59. On March 16, 1965, while in the textile shop plaintiff had written some thoughts on a piece of scrap brown paper intending to take it to his cell. When stopped by a sargeant and questioned about it, he asked to be addressed respectfully and as a man. He was charged with insolence and taking paper from the shop. When he appeared at the disciplinary hearing he was found guilty, although not familiar with the rule about scrap paper and aware that inmates generally took small liberties without any repercussions. He was placed in segregation and 30 days "good time" was taken.

60. He was also found guilty of insolence at the disciplinary hearing despite the fact that the charge was never the basis of a disciplinary hearing and that he was never told about it.

61. For the first twenty days in segregation he was put in a cell without a toilet or sink, with only a bucket and a cot to sleep on at night. For the first ten days he was served less than half rations and not given any soap, toothbrush or toothpaste. After 20 days he was given a shower and placed

in a regular segregation cell. He remained in that cell until March 31, 1966, without any further disciplinary reports of any kind. During this time his access to books was restricted and his commissary was restricted to toilet articles, stamps and paper. Generally plaintiff ate only breakfast because most of the time the other meals contained pork and pork products.

GREEN HAVEN PRISON

62. On March 31, 1966, plaintiff was transferred here, and until January 31, 1967, plaintiff remained in the general population largely without incident.

63. On January 31, 1967, plaintiff was placed in segregation because of the alleged contents of some personal writings admittedly found in his cell and under a locker.

64. Because of the characterization of plaintiff as extremely assaultive and having an extremely poor institutional record, plaintiff was denied a transfer back to Auburn Prison, which had the best school program, despite the fact that he was found to be in need of more schooling. He was, instead, transferred back to Clinton Prison.

CLINTON PRISON

65. On February 11, 1967, when plaintiff arrived back at Clinton, he was interviewed by the Deputy Warden who did not care for his attitude and who therefore ordered him confined to the segregation unit without any charges or any hearing.

66. He spent the first 30 days in Unit 4 in a strip cell without any personal property, including legal materials, and without hygienic articles in his cell. He spent the rest of his time in the privileged section of segregation but subject to all the disadvantages outlined above of being separated from the general population.

67. Plaintiff remained in segregation until December 6, 1967, with only two disciplinary reports of a minor nature. One, dated December 4, 1967, charged him with a refusal to shave cleanly, "an inflammatory act."

68. In the Service Unit records which are transferred with plaintiff from institution to institution the following remarks were recorded: "overall custodial adjustment, since incarceration has been extremely poor as evidenced by an odious prison record of 39 disciplinary reports, the severity of which can be measured in terms of open defiance and disdain toward constituted authority.... an antagonistically inclined individual who is rigidly resistant to authoritarian order.... rabid racist, a black power advocate in possession of inflammatory literature..The inmate's deplorable prison behavior record speaks for itself....a troublesome individual and a source of consternation to the administration in this regard. Motivational force behind pattern of behavior appears to stem from his feelings of resentment and hostility."

AUBURN PRISON

69. On February 1, 1968, plaintiff was transferred to Auburn Prison from Clinton. Within 6 days the Deputy Warden was advised that he had been suspected of causing racial unrest among the population of Green Haven Prison during February, 1967 (EXHIBIT 8), highly inaccurate in content and never ever charged during a disciplinary hearing.

70. While at Auburn Prison plaintiff was subject to a number of keeplocks resulting from misquoting him and outright lies. Because Mr. Zelker, the Deputy Warden, was a fair man, it was no longer possible to accuse plaintiff of arrogance or insolence for being alive and talking out and it became necessary to dress the record up to have plaintiff punished.

71. On April 30, 1969, plaintiff sent a note to Defendant McMann requesting the implementation in the school of a black studies program taught by black teachers and the creation of a library of black authors. (EXHIBIT 9). On May 1, 1969, defendant McMann sent a copy of this letter to defendant McGinnis along with his own letter confirming his request that plaintiff be transferred to Attica Prison (EXHIBIT 10). Reference is made therein to a letter addressed to defendant Mancusi about plaintiff, a highly unusual event, especially when coupled with the fact that the defendant McMann specifically requested plaintiff's transfer to Attica.

ATTICA PRISON

72. On May 2nd, 1969, plaintiff was transferred to Attica Prison. Prior to his transfer he had been enrolled in the school program and doing work on the high school level.

73. Upon his transfer to Attica he was ordered to take the Stanford Achievement Tests; he explained that he had been transferred for advocating a black studies program at Auburn and that he did not wish to participate in the school program until he had taken the issue of the transfer to court.

74. Despite the fact that there was no regulation requiring plaintiff to take these tests upon his transfer and despite the fact that the records from Auburn clearly indicated that plaintiff was above the level for mandatory education and despite the fact that he had been taken out of the school there at a time when he was still low in skills, he was keeplocked for his refusal to take the tests.

75. He was keeplocked, i.e., locked in his cell 24 hours a day, for 30 days at a time in the reception company, without earphones or commissary privileges. Unlike all his other previous long confinements he was not transferred to segregation where he would have had regular daily exercise.

Plaintiff was kept in one cell, leaving it only for a weekly shower and a monthly disciplinary hearing, until January, 1970, more than 279 days.

76. Plaintiff did file court actions in the state and federal district courts as he had claimed he would, but he obtained no relief because the officials concerned denied under oath that the advocacy of a black studies program was the reason for his transfer.

77. Plaintiff had only one disciplinary report during his time in keeplock. He was accused of throwing a cup of milk at a porter when the porter had refused to give him extra rations on December 24, 1969. Plaintiff did not eat pork, which, as mentioned above, left him hungry all the time.

78. Under plaintiff's original sentence of 15 to 30 years he would have been eligible with all his good time earned to make his first appearance before the parole board in 1970 after serving ten years. However, because of the record stated above, plaintiff did not have any good time. He had lost 455 days "good time" as the result of disciplinary proceedings and he had not earned 646 days because he was in segregation or in keeplock. For this reason plaintiff was not allowed to appear before the parole board.

79. In addition a psychiatric interview held at ^{time} that/relies on his reputation among the officers (negativistic, hostile, uncooperative) and his prison record to characterize plaintiff as a case of severe antisocial behavior and psychopathic personality structure. Plaintiff's explanation of racial and religious persecution was dismissed as delusions aggravated by the Black Muslim indoctrination.

80. On January 31, 1970, plaintiff was charged with an unprovoked assault on an officer. Plaintiff, who had been released to the general population three days before, had obtained permission from an officer to visit another company, but another officer stopped him and told him that he was keeplocked for being out of place. As plaintiff reluctantly

started back down the stairs but not quickly enough for the officer the officer pushed him down the stairs. Plaintiff did not put up a fight even when set upon by more guards. He was gassed and taken to the segregation unit and he lost 360 days "good time".

81. He was shortly thereafter transferred to Green Haven at the request of the Warden of Attica Prison. He was characterized as "untractable, insolent arrogant and assaultive with a record of many disciplinary violations of a serious nature in Auburn, Clinton, Attica and Green Haven Prisons. He has been an active instigator also in fomenting trouble against administrative and departmental rules and regulations." (EXHIBIT 11).

GREEN HAVEN PRISON

82. Immediately upon his transfer to Green Haven Prison on February 7, 1970, he was characterized by the Social Service Unit as a "dangerous man with limited insight and definite assaultive traits."

83. Beginning in June, 1970, the Warden was defendant Zelker, who had been the deputy warden at Auburn Prison, 1968-69, and the deputy warden at Green Haven was a former lieutenant in charge of supervising Unit 14 at Clinton Prison in 1964 - 65, whose son was involved in assaulting plaintiff in 1965, who had presided over the hearing in 1967 based on papers found under a locker in plaintiff's cell.

84. Based on his reputation and the deputy warden's attitude toward plaintiff and the number of disciplinary charges already and unfairly on his record, plaintiff was harrassed by various correction officers and the written reports were ratified by the officials in the institution; as usual plaintiff was always found guilty and punished:

a. On July, 18, 1970, counsel for plaintiff brought him a food package which contained two packages of Familia, a Swiss

cereal, which was not allowed in the institution because it contained raisins and cereals. Plaintiff asked merely that rather than either destroying it or mailing it back to counsel at her expense that it be kept at the institution and returned to me at my next visit, which was in fact done. Nevertheless, plaintiff was charged with refusing to sign a disposition slip, insolence, disobeying an order and throwing a temper tantrum in the package room. He was found guilty as charged and given a ten day keeplock.

b. On July 28, 1970, the first day that he was released to the general population after his keeplock he was charged with teaching karate in the yard and he was placed in segregation. Another inmate with whom he had been exercising was also put in segregation on the same charges.

c. On August 8, 1970, while still confined to segregation, plaintiff and several other inmates were exercising in their cells. Plaintiff at that time was not allowed to go to the segregation yard for exercise. He was charged with excessive noise, screaming and hollering, a charge plaintiff denied; he was nevertheless found guilty and lost ten days "good time."

d. On August 21, 1970, plaintiff was written up for two incidents, passing a book and teaching karate. He was keeplocked in his cell until August 26, 1970, when he attended a disciplinary hearing and was found guilty; he lost 10 days good time and 15 days no yard or movies. Plaintiff had been returned to the general population from segregation on August 18, 1970; an order to show cause why plaintiff was in segregation had been returnable on August 19, 1970, and on that day counsel for the defendants that the action had been mooted.

e. On August 26, 1970, at the hearing for the above incident plaintiff remarked that the disciplinary court was a sham and a fake and asked for the release of Lorrell Milton, the other inmate placed in segregation for the same incident on July 28,

1970. He was still in segregation at that time. Right after the hearing on August 26, 1970, plaintiff was again keeplocked until a hearing on August 31, 1970, when he was found guilty of insolence and disrespect and lost 10 days "good time".

f. On August 31, 1970, plaintiff refused to plead to the charges and again asked why Lorrell Milton was still being held in segregation. He was again charged with disrespect in the disciplinary court, and again keeplocked until a hearing on September 2, 1970. At the hearing he was found guilty and he lost 15 days of recreation privileges.

g. On September 3, 1970, plaintiff missed the line to the messhall and he was charged with being out of place. At a hearing on September 4, 1970, he was found guilty and given a 15 day keeplock.

h. On September 22, 1970, four days after his keeplock had ended plaintiff was denied a pass to go to the correspondence unit to mail legal papers out to counsel. The issuance of a pass to do this is usually routine. Plaintiff went to mail the papers out anyway, and, as a result, he was keeplocked pending a hearing and then found guilty and given 10 days no yard or movies as punishment.

i. On October 7, 1970, plaintiff was charged with disrupting the shop and insolence; he was found guilty and given a 15 day keeplock.

j. On October 16, 1970, while already keeplocked, plaintiff was accused of threatening an officer, insolence, and disobeying an order, for which he was found guilty and given an additional 20 day keeplock consecutive to previous 15 day keeplock.

k. On October 30, 1970, and November 3, 1970, plaintiff while still keeplocked was accused of insolence, disrespect and threatening an officer and again threatening an officer.. As a result of new regulations providing for superintendent's proceedings and otherwise supposedly revamping the disciplinary proceedings, plaintiff did not receive a summary hearing.

At the initial hearing an adjustment committee report was

made requesting a Superintendent's Proceeding, the most serious type of disciplinary hearing, be held, not because of the seriousness of the charges, which plaintiff denied, but because plaintiff had so many previous disciplinary reports.

85. On November 20, 1970, plaintiff was called for hearing. The statute provided for a counsel substitute to represent the inmate, but no provision was made for the cross-examination of witnesses against the plaintiff or the calling of witnesses by the plaintiff. At this hearing plaintiff did not even have a counsel substitute present. Sargeant Profera, who had pressed charges against the plaintiff for being disrespectful during a disciplinary hearing on August 31, 1970, was on vacation and plaintiff was not represented. He was told that someone else would be assigned to represent him at a later date. Records, however, indicate that plaintiff was found guilty at the conclusion of this interview.

86. Plaintiff was told at the above-mentioned hearing that he was being transferred to the Readjustment Company, an area of the prison commonly known as "little segregation" so that he would get daily exercise. He remained here until December 29, 1970, when he was transferred back to Clinton Prison once again. At the time of his transfer an action for injunctive relief was pending in the Southern District Court before the Honorable Constance Motley; this was mooted by plaintiff's transfer, because the only defendant named was defendant Zelker, then the Warden of Green Haven.

87. Also mooted by the transfer was an agreement between counsel entered on August 19, 1970, that counsel for plaintiff would be notified within six hours if plaintiff were placed in segregation. At the time of his transfer no charges were pending against plaintiff, and to the best of his knowledge he was merely awaiting reassignment to a block in the general population other than D block, where the charges against him had been fabricated.

88. The transfer to Clinton Prison, which is not within the jurisdiction of the Southern District Court, was, upon information and belief, made at the request of Defendant Zelker.

89. Upon arrival at Clinton he was placed in E Block Readjustment Company, despite the fact that there was no reason why he was in the same status at Greer Haven.

90. Within two days he was placed in segregation, Unit 14, where he had spent several years earlier. He was put there after he refused to engage in a discussion with the same man who had put him in segregation for 9 months and without any charges in 1967.

91. Under the new regulations he was interviewed by the Adjustment Committee once a week while in Unit 14, and each week he was held over until the next week because of some alleged incident. Eventually on February 5, 1971, he was permitted to go to the general population.

92. On March 27, 1971, plaintiff's cell was searched and he was charged with having an uncensored book and inflammatory literature. Once again because of his past record plaintiff was subjected to Superintendent's Proceedings. Among the "inflammatory material" was a copy of a writ filed in the Southern District Court in 1970 and notarized at Green Haven. Plaintiff was keeplocked pending a disposition at the hearing; on April 4, or thereabouts, he was given time served.

93. On May 14, 1971, plaintiff was charged with violating a regulation banning inmates from running in certain parts of the recreation yard. This regulation was announced from time to time, and never to plaintiff's knowledge and he and others had run in this area on a daily basis without being told not to do so. After an appearance before the Adjustment Committee, plaintiff was again referred for

Superintendent's Proceedings based on his "long and varied record of insubordination, arrogance, and violations of institutional rules" and for stating to the Committee that he had no chance of getting a fair hearing. As a result of a Superintendent's hearing on May 21, 1971, plaintiff was placed in segregation for 60 days and lost 90 days "good time."

94. Plaintiff remained in segregation until January 7, 1972, when he was transferred back to Green Haven, subject to intolerable conditions and pressures.

PRESENT CONDITIONS WARRANTING INJUNCTIVE
RELIEF AGAINST THE DEPARTMENT OF CORRECTIONAL
SERVICES COMMISSIONER AND HIS AGENTS.

95. Since 1972 plaintiff continues to be harrassed and discriminated against based on the accumulated record: parole was denied to plaintiff in 1972 and 1973; in the spring of 1973 plaintiff was keeplocked at Clinton for an extended period of time because of his alleged past record for suspected involvement in a disturbance he had nothing to do with; in March, 1973, plaintiff's record which is in issue here was used to transfer him to a conditioning program in which he did not wish to participate.

96. Within the past four months plaintiff has been singled out for punishment because of his past record and his reputation which is largely unwarranted.

97. Plaintiff is unable to obtain a fair and just hearing under the present regulations because of the overriding prejudice against him at all levels of the Department's Administration. As recently as September 20, 1973, two weeks before his appearance before the Parole Board, plaintiff was found guilty of participating in an illegal assembly with which he had nothing to do.

98. The aforesaid actions of the defendants and of their agents have violated plaintiff's rights secured and protected by the Constitution and Laws of the United States as follows:

- a. Plaintiff has been placed in segregation for almost seven years for his religious, political and cultural views.
- b. He has been punished for expressing his opinions and for exercising his right to freedom of expression.
- c. He has been subjected to cruel and unusual punishment because of his exercise of his First Amendment Rights.
- d. He has been subject to cruel and unusual punishment and to arbitrary and capricious treatment because he would not surrender his religious beliefs and stop trying to exercise his rights.
- e. He has been punished and subjected to cruel and unusual punishment for protesting arbitrary and capricious conduct by the defendants and their agents.
- f. He has been harrassed because he refused to acknowledge and racial and moral superiority of his keepers and to surrender his person.
- g. He has been discriminated against because he was a Black Muslim and he has been denied the right to practice his religion.
- h. Plaintiff has been continuously denied the basic elements of procedural due process of law and fundamental fairness in all disciplinary proceedings. He has been arbitrary charged with violations of non-existent rules and of unannounced rules; he has been charged with the failure to submit totally to the will of his keepers; he has been punished disproportionately; he has been subjected to disciplinary proceedings for the sole purpose of breaking his will and destroying his individuality and integrity and giving pleasure to his keepers, the defendants.
- i. Even under the new procedures plaintiff has been penalized for a long record resulting from arbitrary and capricious conduct of the officials and punished more extensively because of his illegitimate past record. Because of this past

unconstitutional prior record of disciplinary proceedings plaintiff has been prejudiced in all his dealings with the Department of Correctional Services, including the Board of Parole;

j. Even under the new procedures adopted in 1970 plaintiff is still unable to obtain a fair hearing: he has been recommended for Superintendent's Proceedings based on his past record, and not the seriousness of the charges under consideration; because of this record and his reputation because of this record he is never believed; despite the fact that written charges are presented and dispositions are served on the plaintiff in writing, he has no more due process than before; plaintiff is unable to call witnesses on his behalf or to cross-examine witnesses against him; but, most importantly, the decision making process is generally in the hands of the deputy warden directly charged with the supervision of the uniformed personnel and rather than create any tensions with the uniformed force or any labor problems the officer's word is always favored over the plaintiffs.

RELIEF

99. Plaintiff respectfully prays that he be granted the following relief:

a. a preliminary and final injunction enjoining defendants and their agents from taking any further disciplinary actions against the plaintiff until it can be demonstrated that plaintiff will receive a fair hearing and until plaintiff's disciplinary record has been altered to eliminate all unconstitutional incidents and punishments.

b. a declaratory judgment that plaintiff has been wrongfully punished in violation of his constitutional rights and that he has been wrongfully deprived of the opportunity to earn good time and of good time which he did in fact earn.

c.

- c. damages in the sum of one hundred thousand (\$100,000.00) Dollars to the plaintiff for the cruel and unusual punishment to which he has been subjected and for the violation of his constitutional rights.
- d. counsel fees and court costs.
- e. such other and further relief as the Court shall deem just and proper in these premises.

Respectfully submitted,

Dated: October 30, 1973

Elizabeth M. Fisher

ELIZABETH M. FISHER
Attorney for Plaintiff
516 Green Street
Cambridge, Mass. 02139

617-492-2477

MUKMUK v. COMMISSIONER OF DEPT. OF CORRECTIONAL SERV. 245

Cite as 369 F.Supp. 245 (1974)

judgment on the pleadings or summary judgment, and of plaintiff to add parties, amend the complaint, and for summary judgment, the District Court, Bon-sal, J., held that insofar as complaint sought restoration of good time, it had to be treated as petition for writ of habeas corpus and had to be denied for failure to exhaust available state remedies; that complaint, insofar as it sought damages and injunction, failed to state a cause of action by allegations of placement in segregation unit, confinement on various occasions in a "strip cell," being keeplocked, and being disciplined for prison rules infractions by loss of good time and recreation privileges, together with general allegation of harassment because prisoner was a Black Muslim; and that prisoner would not be permitted to file another amended complaint.

Defendants' motion for summary judgment granted; plaintiff's motion denied.

1. Habeas Corpus \Rightarrow 45.3(1), 53

Insofar as state prisoner's second amended complaint, alleging mistreatment by prison authorities in violation of his constitutional rights in connection with rule infractions, sought restoration of good time credits, it had to be treated as a petition for writ of habeas corpus, and, accordingly, had to be denied for failure to exhaust available state remedies. 28 U.S.C.A. §§ 1343, 2254; 42 U.S.C.A. § 1983.

2. Constitutional Law \Rightarrow 272
Criminal Law \Rightarrow 1213

State prisoner's second amended complaint, seeking damages and injunctive relief with respect to allegations, inter alia, of being placed in a segregation unit and of being disciplined for prison rules infractions by loss of good time, together with general allegation of harassment because he was a Black Muslim, even if accepted as true, did not show that prisoner was subject to cruel or unusual punishment or denied due process, and thus failed to state a cause

Masia A. MUKMUK, also known as Sylvester Cholmondeley, Plaintiff,

v.

COMMISSIONER OF the DEPARTMENT OF CORRECTIONAL SERVICE.

ES et al., Defendants.

No. 70 Civ. 3518.

**United States District Court,
S. D. New York.**

Jan. 14, 1974.

State prisoner, by second amended complaint, sought injunctive relief and damages and restoration of good time credits on basis of alleged denial of his constitutional rights in connection with alleged mistreatment for rule infractions. On motion of defendants for

of action against state corrections department and corrections officials, particularly where it was not alleged that the named defendants personally played any part in the alleged denials of the prisoner's constitutional rights. Fed. Rules Civ.Proc. rules 12(c), 56, 28 U.S.C.A.; 28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983.

3. Prisons \S 12

Correctional authorities have wide discretion in matters of internal prison administration, and reasonable action within the scope of such discretion does not violate a prisoner's constitutional rights.

4. Civil Rights \S 13.7

When monetary damages are sought under civil rights statute, general doctrine of respondeat superior does not suffice, and a showing of some personal responsibility of defendant is required. 42 U.S.C.A. § 1983.

5. Federal Civil Procedure \S 840

Where state prisoner, in civil rights action against correction authorities, had filed three prior complaints and had been dilatory in prosecution of the action, he would not be permitted to file a further amended complaint which simply set forth greater detail than that which was contained in prior amended complaint, and listed more recent instances of alleged mistreatment.

Elizabeth M. Fisher, Cambridge, Mass., for plaintiff.

Louis J. Lefkowitz, Atty. Gen., New York City, for defendants; David R. Spiegel, Deputy Asst. Atty. Gen., of counsel.

MEMORANDUM

BONSAL, District Judge.

Defendants move pursuant to Rule 12(c), Fed.R.Civ.P., for judgment on the pleadings, or in the alternative, for summary judgment pursuant to Rule 56, Fed.R.Civ.P. Plaintiff has cross moved

for leave to add parties, to amend the complaint, and for summary judgment.

Plaintiff, Sylvester Cholmondeley, also known as Masia Mukmuk, is presently confined to Great Meadow Correctional Facility pursuant to a judgment of conviction in Queens County Court on June 29, 1960. He was convicted for the crimes of rape in the first degree, burglary in the third degree, and robbery in the third degree, for which he was sentenced to serve the following terms of imprisonment: 10 to 20 years on the rape conviction, 5 to 10 years on the burglary conviction, and 5 to 10 years on the robbery conviction. The sentences on the burglary and robbery convictions are concurrent with each other, but consecutive to the sentence on the rape conviction.

Plaintiff instituted this action pursuant to 42 U.S.C. § 1983 on August 14, 1970. Jurisdiction is claimed under 28 U.S.C. § 1343. His original complaint (the "August 14, 1970 complaint"), filed while he was an inmate at Green Haven Correctional Facility, alleged that when he was transferred to Green Haven on February 7, 1970, some books and magazines were "confiscated by agents of defendant Zelker [Superintendent of Green Haven Correctional Facility from June 11, 1970 to March 29, 1972] and have not been returned," and that he was improperly disciplined on July 28, 1970 by being placed in solitary confinement for teaching karate in the exercise yard. He sought an injunction ordering the defendant to return to him his personal writings, books, and magazines and to release him from solitary confinement. Plaintiff moved by order to show cause for a preliminary injunction. However, the problems for which his motion was presented were adjusted by agreement between the parties, and the motion was accordingly dismissed on consent and without prejudice by Judge Frankel on August 21, 1970.

On December 17, 1970, plaintiff filed an amended complaint (the "December 17, 1970 complaint") setting forth approximately 15 occasions on which he

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Cite as 369 F.Supp. 245 (1974)

was punished for prison-rule infractions during the year 1970, usually by being "keeplocked" in his cell for short periods ranging up to 20 days, by being placed in solitary confinement, or by the loss of "good time" or recreation privileges. He alleged that these disciplinary measures were taken as a result of his espousal of the Black Muslim religion while in prison.

By notice of motion filed May 14, 1971, plaintiff petitioned the court to adjourn until early fall of 1971, the consolidated trial on the merits and hearing on the application for a preliminary injunction, originally noticed for May 19, 1971, and also petitioned for leave to file an amended complaint. By order dated May 17, 1971 and filed October 15, 1971, Judge Motley denied without prejudice the application for a preliminary injunction and granted the plaintiff's motion for leave to file an amended complaint.

On October 15, 1971, plaintiff filed an amended complaint (the "October 15, 1971 complaint")—toward which the defendants' present motion is directed—in which he alleges that he has been mistreated by prison authorities in connection with rule infractions beginning with his first confinement in New York State prisons on August 29, 1960 and continuing to the present. His complaint sets forth approximately 80 such instances. Alleging that these disciplinary measures constituted a denial of his constitutional rights, he seeks a "final injunction against the wrongs complained of in this Complaint," a declaratory judgment and restoration of the good time which he claims to have lost by reason of the alleged mistreatment by prison authorities, and damages in the amount of \$100,000 for "the cruel and unusual punishment to which he has been subjected," plus costs and attorneys fees. This complaint does not allege that he has previously exhausted his State remedies with respect to these claims.

On November 1, 1971, defendants filed a motion to dismiss the October 15, 1971 complaint on the grounds that venue in

the Southern District of New York was improper and that the defendants were improperly named in the complaint under the doctrine of *respondet superior*. Judge Brieant denied the motion by endorsement on November 23, 1971, and defendants filed their answer on February 16, 1972.

There followed an interlude during which no action was taken on the case until September 22, 1972, when defendants moved to dismiss for failure to prosecute. In opposition to this motion, plaintiff's counsel filed an affidavit in which she stated that "the period of dormancy in this case . . . coincided with certain developments in the plaintiff's situation that made the pursuit of legal redress an unwise tactic." On the return date of the motion, plaintiff's counsel advised the court that she was ready to proceed with the action, pending the discovery of certain documents which she believed to be in the possession of the Department of Correction. On October 30, 1972, the court denied the motion to dismiss and set December 1, 1972 as the date for the submission of a Pretrial Order.

On March 16, 1973, plaintiff moved for a preliminary injunction seeking to enjoin the defendants from transferring the plaintiff to a rehabilitation program and ordering that the plaintiff be placed in federal protective custody pending the disposition of this action. By memorandum filed on April 20, 1973, the motion for a preliminary injunction was denied and the parties were directed to file a Pretrial Order at the earliest possible time.

On March 28, 1973, plaintiff filed a motion seeking discovery of all disciplinary reports, records, and other documents pertaining to the plaintiff, including daily journals and segregation log books from each of the prisons at which plaintiff had been confined. This motion was referred to Magistrate Jacobs, and a hearing was held on April 3, 1973. At the hearing, it was agreed that the defendants would produce any writings from their files which made specific ref-

erence to the plaintiff; any writings, or references to writings, by the plaintiff; any correspondence between the plaintiff and Department of Correction officials; any writings which made reference to the plaintiff as a Black Muslim or to Muslims generally at any institution where plaintiff was at any time confined; and any writings referring in any way to any policy at any institution with respect to Muslims. In addition, defendants agreed to make available for inspection the segregation log books and daily journals referring to the days in which the plaintiff was in segregation or in which he was the subject of disciplinary action. Defendants were not required to produce any documents reflecting personal opinions or work product in connection with litigation. As a result of this agreement, the plaintiff's motion was withdrawn.

In spite of the attempts by the Magistrate to work out a Pretrial Order and despite the volume of discovery material produced, no Pretrial Order has been filed. On October 5, 1973, defendants filed the present motion for judgment on the pleadings or for summary judgment. The motion was originally made returnable on October 23, but it was later adjourned to November 5, 1973. On October 30, 1973, plaintiff filed his motion for leave to add parties, to amend the complaint, and for summary judgment.

[1] With respect to their motion for judgment on the pleadings, defendants contend that under the Supreme Court's recent decision in *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), a civil rights action seeking the restoration of good conduct time credits must be treated as a petition for a writ of habeas corpus with the attendant requirement that a plaintiff must exhaust his available State remedies pursuant to 28 U.S.C. § 2254 before presenting his claims to a Federal court. Defendants contend that this is such an action, even though the second amended complaint includes a prayer for damages and injunctive relief, which the defend-

ants claim are "obviously tangential" to the "primary thrust of plaintiff's complaint," to secure his earlier release from confinement. Plaintiff, who has been represented by counsel since the commencement of this action, contends that *Preiser* does not apply to that part of the complaint seeking damages and an injunction.

With respect to good time, because of his prison disciplinary record, which, according to the defendants, is one of the worst ever compiled by a New York State prisoner, plaintiff's loss of good time as of the filing of the October 15, 1971 complaint was 1,915 days, which would have made him ineligible for conditional release until 1979. Had plaintiff received the same allowances as a model prisoner, on the other hand, he would have been eligible for conditional release on July 17, 1973. At present, plaintiff will be eligible for conditional release on February 22, 1975. This revised date was the result of a thorough review of plaintiff's disciplinary record in May, June, and early July, 1973, after which the Department of Correction in its discretion restored approximately 1,400 days of good time to plaintiff.

Preiser involved three New York State prisoners who were placed in segregation and deprived of good conduct time credits as a result of prison disciplinary proceedings. Each commenced a *pro se* action by filing a combined civil rights complaint and petition for habeas corpus relief. Alleging that they had been unconstitutionally deprived of the good-time credits, they sought an injunction to compel the restoration of the credits, which in each case would have resulted in their immediate release from confinement. The Supreme Court held:

"[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate or speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." 411 U.S. at 500, 93 S.Ct. at 1841.

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In a footnote, Justice Stewart wrote for the Court:

"If a prisoner seeks to attack both the conditions of his confinement and the fact or length of that confinement, his latter claim, under our decision today, is cognizable only in federal habeas corpus, with its attendant requirement of exhaustion of state remedies. But, consistent with our prior decisions, that holding in no way precludes him from simultaneously litigating in federal court, under § 1983, his claim relating to the conditions of his confinement." 411 U.S. at 499 n. 14, 93 S.Ct. at 1841.

Accordingly, insofar as the October 15, 1971 complaint seeks the restoration of good time, it is treated as a petition for a writ of habeas corpus, which must be denied for the failure of the plaintiff to exhaust his available State remedies.

[2,3] With respect to plaintiff's claims for damages and an injunction—claims relating to the conditions of his confinement—the complaint must also be dismissed. Plaintiff complains of being placed in a segregation unit; of being confined on various occasions in a "strip cell" containing only a toilet, sink, and a bed; of being keeplocked; and of being disciplined for prison-rule infractions by loss of good time and recreation privileges. In addition, he alleges generally that he has been subjected to "a continuing course of harrassment [sic]" because he is a Black Muslim. These allegations are disputed by the defendants in the Spiegel affidavit dated October 2, 1973. Treating the allegations as true, however, it is nevertheless well settled that correctional authorities have wide discretion in matters of internal prison administration and that reasonable action within the scope of this discretion does not violate a prisoner's constitutional rights. *Christman v. Skinner*, 468 F.2d 723, 725 (2d Cir. 1972); *Sostre v. McGinnis*, 334 F.2d 906, 908 (2d Cir.), cert. denied, 379 U.S. 892, 85 S.Ct. 168, 13 L. Ed.2d 96 (1964). See *Smith v. Schneckloth*, 414 F.2d 680, 681 (9th Cir. 1969),

and cases cited therein. In *Corby v. Conboy*, 457 F.2d 251, 254 & n. 2 (2d Cir. 1972), for example, the Court of Appeals held that in view of this discretion accorded correctional authorities, claims of insufficient warm clothing, inadequate diet, poor lighting, lack of personal hygiene supplies and hot water, harassment, and discipline for refusal to accept employment—claims similar to those raised here—did not state a claim for which relief could be granted.

[4] Moreover, plaintiff has not alleged that the named defendants personally played any part in the alleged denials of his constitutional rights. As the court stated in *Johnson v. Glick*, 481 F.2d 1028, 1034 (2d Cir. 1973):

"The rule in this circuit is that when monetary damages are sought under § 1983, the general doctrine of *respondeat superior* does not suffice and a showing of some personal responsibility of the defendant is required."

Thus, the complaint also lacks the required specificity to state a claim for damages under the Civil Rights Laws. See also *Powell v. Jarvis*, 460 F.2d 551, 553 (2d Cir. 1972).

Plaintiff's complaint does not include any allegations that the defendants prevented him from communicating with his attorneys or with the court or hindered him from preparing legal papers. See *Corby v. Conboy*, *supra*. And accepting the October 15, 1971 complaint's allegations as true, it does not appear that the plaintiff has been subjected to cruel or unusual punishment for his prison-rule infractions nor denied due process under the requirements of *Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971) (en banc), cert. denied sub nom., *Sostre v. Oswald*, 404 U.S. 1049, 92 S.Ct. 719, 30 L.Ed.2d 740 (1972). See *Christman v. Skinner*, 468 F.2d 723, 725 (2d Cir. 1972).

For the foregoing reasons, the complaint fails to state a cause of action. Since the pleadings and affidavits show that there is no issue of fact for trial,

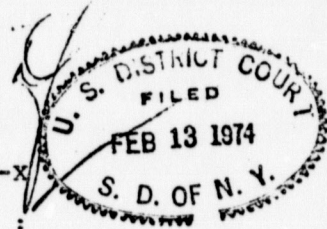
defendants' motion for summary judgment is granted.

[5] Plaintiff's motion for leave to add parties, to amend the complaint, and for summary judgment was made on October 30, 1973, just prior to the return date of the defendants' motion. The proposed amended complaint, also dated October 30, 1973, which would be the third amended complaint in this action, simply sets forth in greater detail what is contained in the October 15, 1971 complaint, and in addition it lists more recent instances of alleged mistreatment. It appears from the plaintiff's disciplinary record that he has not lost any good time as a result of these most recent incidents, for which the plaintiff has usually been keeplocked for short periods. In view of the prior three complaints and the dilatory prosecution of this action by plaintiff, the court will not delay this action's disposition further by permitting another complaint to be filed. Accordingly, plaintiff's motion for leave to add parties, to amend the complaint, and for summary judgment is denied.

Defendants may settle judgment on notice.

It is so ordered.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MASIA A. MUK MUK, also known as
SYLVESTER CHOLMONDELEY,

Plaintiff,

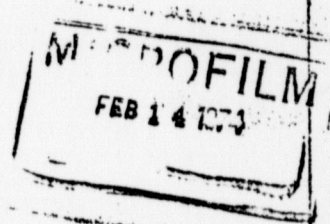
-against-

ORDER

COMMISSIONER OF THE DEPARTMENT OF COR-
RECTIONAL SERVICES, J. EDWIN LaVALLEE,
Superintendent of Clinton Correctional
Facility, VINCENT R. MANCUSI, Super-
intendent of the Attica Correctional
Facility, and JOHN L. ZELKER, Super-
intendent of the Green Haven Correc-
tional Facility,

70 Civ. 3518
(D.B.B.)

Defendants.



A motion having been made in behalf of defendants,
Commissioner of the Department of Correctional Services,
J. Edwin LaVallee, as Superintendent of Clinton Correctional
Facility, Vincent R. Mancusi, as Superintendent of the Attica
Correctional Facility and John L. Zelker, as Superintendent
of the Green Haven Correctional Facility for judgment on the
pleadings, pursuant to Rule 12(c) of the Federal Rules of Civil
Procedure or, in the alternative, for summary judgment pursuant
to Rule 56 of the Federal Rules of Civil Procedure and plaintiff
having cross moved for leave to add parties, to amend the com-
plaint, and for summary judgment, and said motions having come
on to be heard on the 5th day of November, 1973, before the
Hon. Dudley B. Bonsal, and the plaintiff having duly appeared
by Elizabeth Fisher, Esq., his attorney, and defendants having
appeared by Louis J. Lefkowitz, the Attorney General, by David R.
Spiegel, Esq., Assistant Attorney General, and the pleadings
and supporting papers of the respective parties hereto having

ONLY COPY AVAILABLE

been filed and read, including plaintiff's complaint, filed August 14, 1970 and plaintiff's amended complaint, filed December 17, 1970, and plaintiff's second amended complaint, filed October 15, 1971 (incorrectly denominated by plaintiff as an "amended complaint"), and the answer of the defendants to the second amended complaint, filed February 16, 1972, and all of the papers filed subsequent thereto, it is

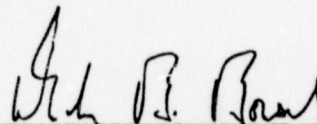
ORDERED AND ADJUDGED that defendants' motion for summary judgment is granted and plaintiff's second amended complaint is in all respects dismissed, and it is further

ORDERED AND ADJUDGED that plaintiff's claims involving the restoration of good time are dismissed for failure to exhaust his state remedies, and it is further

ORDERED AND ADJUDGED that plaintiff's claims for injunctive and declaratory relief and for damages, costs and attorney fees are in all respects denied, and it is further

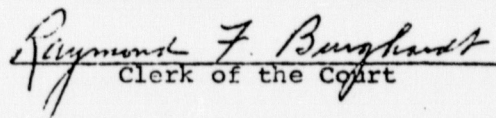
ORDERED AND ADJUDGED that plaintiff's motion for leave to add parties, to amend the complaint and for summary judgment is in all respects denied.

ORDERED AND ADJUDGED this 13th day of February, 1974.



DUDLEY B. BONSALE
United States District Court Judge

JUDGMENT ENTERED FEB 14 1974


Clerk of the Court

CARD

NEW YORK STATE DEPARTMENT OF CORRECTION

AUBURN PRISON

11693

WPI in Plattburgh wants to know if Cholmondeley is transferred or released.

NAME Cholmondeley, Elsie 100113 Benny
 DATE SENTENCED 5/19/60 JUDGE Edward Tamm COUNTY Queens
 CRIME FOR WHICH SENTENCED Robbery-1st Degree LENGTH OF SENTENCE 101 DAYS PLEA OR VERDICT Guilty
 JAIL TIME 101 DAYS ELIGIBLE FOR PAROLE Yes MAXIMUM EXPIRATION DATE 11/19/60
 DATE OF BIRTH 6/12/32 AGE 27 COLOR Black WEIGHT 153
 COLOR OF HAIR Black COLOR OF EYES Brown ANY OUTSTANDING PERSONAL CHARACTERISTICS None

PRESENT CRIME
 CRIMINAL ACT Broke & entered apartment-assaulted & raped woman-stole current
 DATE CRIME COMMITTED 5/19/60 PLACE WHERE CRIME COMMITTED Rockaway, N.Y.
 DATE OF ARREST 5/19/60 ARRESTING AGENCY NYC PD
 CRIMINAL ACT ATTRIBUTED TO "I was drunk" VALUE OF MONEY OR GOODS INVOLVED \$ 22.00 RECOVERED Yes
 ACCOMPLICES Willie Ed Lloyd
 IS PRISONER ON FRIENDLY TERMS WITH ACCOMPLICES? Yes WHERE ARE THEY NOW Reception Center #21064

MISCELLANEOUS PERSONAL DATA
 MENTAL AGE 15 RELIGION Prot. MILITARY SERVICE: BRANCH OF SERVICE None TYPE OF DISCHARGE None
 AGE LEFT SCHOOL 15 GRADE REACHED 8th ANY SPECIAL OR TECHNICAL EDUCATION OR COLLEGE None
 OCCUPATION OR TRADE None DATES OF LAST EMPLOYMENT: FROM None TO None
 NAME OF LAST EMPLOYER None ADDRESS None WAGES OR SALARY None
 USE OF ALCOHOL: EXCESSIVE None MODERATE X NON-USER None USE OF DRUGS: YES None NO X
 BIRTHPLACE NYC NATIVITY, RESIDENCE, ETC. NYC STATE NY COUNTRY USA
 IF NOT UNITED STATES: DATE OF ENTRY INTO U.S. None NATURALIZED: YES None WHEN None
 RESIDENCE WHEN ARRESTED 82-01 Hammels Blvd., Rockaway, NY
 LENGTH OF RESIDENCE PRESENT LOCALITY 6 yrs. LENGTH OF RESIDENCE IN NEW YORK STATE 11 yrs.
 LEGAL RESIDENCE Rockaway, N.Y.
 NEAREST RELATIVE: NAME Mother: Elsie Cholmondeley ADDRESS 82-01 Hammels Blvd., Rockaway, N.Y.

FAMILY DATA
 NAME OF FATHER Robert Rollins MAIDEN NAME OF MOTHER Elsie Cholmondeley
 BIRTHPLACE OF FATHER Unknown BIRTHPLACE OF MOTHER NYC
 BOTH PARENTS LIVING Yes IF FATHER DEAD, AGE OF PRISONER WHEN FATHER DIED None IF MOTHER DEAD, AGE OF PRISONER WHEN MOTHER DIED None
 NUMBER OF BROTHERS LIVING None NUMBER OF SISTERS LIVING 1 SEQUENCE IN FAMILY 1st MARITAL STATUS Single
 NUMBER OF CHILDREN LIVING None NUMBER OF DEPENDENTS SUPPORTED None UNDER 1100X OVER 12/12

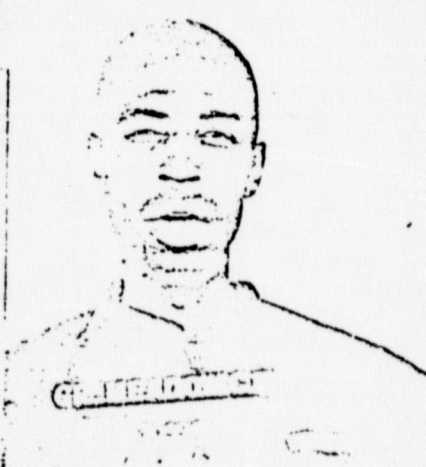
APPEARED BEFORE PAROLE BOARD 5-2-60 Administrative
 DATE 5-2-60 DATE 5-2-60
 REASON FOR VIOLATION None DISCHARGED Yes

DATE	OFFICER	CHARGE	TIME
11/30/60	None	Release-no hobby work UFO. This man placed a bag of wood and unfinished lamps at the door leading to Cao. #1. I confiscated them and asked him what they were for. He told me they were for a friend in Cao. #2 who had given them to him to send for him.	
1/20/61	10	Release. Walking to counter side of messhall w/o permission to see a friend. Has been warned previously to stop this practice.	E.D. Hayes
5/29/61	None	Reprimand. Lingered in the hall	E.D. Hayes
5/5/61	30	When comment was made about breakfast. HL 10 days. Jumping the line at mess.	Harding
8/10/61	None	Forfeit yard for 10 days for arguing with Golden-22731-30 Rec. after being wanted to stop by J. Gardner.	J. Gardner
			J. Morahan

LABOR RECORD

HOURS | ASSIGNMENT

6/23/73 Rev.
 7-24-73 Big Yard
 8/1/73 Big Yard
 BRN
 SEP 21/73 1st



EDUCATION RECORD

HOURS | SUBJECT

7-26-62: 120 hrs
 CNA ASP JMC CCA
 GOSN: 1371...
 SEP 13 1973 - 7...
 2/27/73 Held 12-40

PREVIOUS CRIMINAL RECORD INCLUDING JUVENILE DELINQUENCY

8/19/73 PAGE 211 DATE OF DISPOSITION 1/17/74 DISPOSITION 1/17/74

Previous history

(3) concurrent to each other and consecutive to (1)
 1) Rape 1st - 10-20-60 - 1st - 10-20-60 - 1st - 10-20-60

52-1854-3 3/20/60 Prod in Ret from Cay Coun Crt. case dismissed 10-20-60

10-20-60 10-20-60 10-20-60 10-20-60 10-20-60 10-20-60

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10-20-60 10-20-60 10-20-60 10-20-60 10-20-60 10-20-60

S. S.-I-23A G. M.-288

Cm # 30999

DISCIPLINARY ACTION CONTINUED

S. Chulmonte

Date	Time Forfeited	Charge	Officer
10/3/61	30	To Seg. own request. Keep-locked at own request-acting in consort with other inmates in a movement against the discipline of the institution in protest of disciplinary action taken against Blyden-54332.	T. Muxer
10/10/61	10	Release. Having a contraband cord, made from an undershirt in his cell.	E. Murphy
10/12/61	10	Release. Altered two state shirts by cutting off sleeves & putting tucks in back.	McGue
12/03/61	None	Reprimand. This seg. inmate claimed his noon meal was unclean and refused to eat.	D. J. Po
2/03/62	30	Release. This Seg. inmate was agitating and inciting to revolt against whites.	C. J. Papan
3/21/62	20 dys.	Release. Disobeying order; inmate came out of cell wearing a home-made hat, bearing the emblem of the Muslims; refused to give it to reporting officer, threw it into the toilet and then refused to flush it down.	Conner
3/27/62	None	Reprimand. Refusing medication.	E. Eranachko
5/6/62	None	Reprimand. Disobedience and delaying seg. yard closing. At about 10:45 A.M. this seg. inmate disregarded instructions given by me in regard to the inmate exit rotation from the seg. yards.	G. J. Panari
5/13/62	30 days K1	10 days. Refusing to come out of Seg. yard-insolence and threatening an officer.	C. Conne
5/19/62	30 days K1	10 days. Throwing state food in toilet, inmate asked for and received a full bowl of chop suay, turned and threw it into the toilet.	Conne
5/23/62	None	Reprimand. Refusing to shave.	M. T. Layler
10/27/62	30 days	Having contraband literature in his cell.	C. Dusat
10/25/62	30 days	Resisting an officer and refusing to obey direct orders to move and go to block.	B. Reid
1-25-63	No comm.	30 days. Refusing to come out of his cell to clear platform of snow.	A. Drolle
2-28-63	30 dys.	Refusing to go to the yard.	A. Drolle
5/9/63	30 dys.	Writing an insolent note to Warden demanding to know what his (Warden's) motive for confiscating personal property.	H. Follett
6/26/63	No Yd. 60 days.	Receiving legal papers prepared by Richey 37903	LaBounty
3/22/64		#4 sec. indef. Complaining about food every day.	J. Freney

CONT'D. on BACK

S-I-23A G. M.-238

DISCIPLINARY ACTION CONTINUED

Date	Time Forfeited	Charge	Officer
4/27/64	#4 section 30 days	Demanding personal services-wanted his legal books immediately when he moves off 4 section.	J. Kenne
7/23/64	Destroying state property for the toothbrush.	No Yard 30 days.	
9/15/64	Bruso	Receiving tobacco from inmate Davis 36638 4 Seg. - 15 days	
9/16/64		Passing library book to Davis, who had lost his library privileges for 6 months.	4 seg. 15 days
10/11/64	Akey	Disobeying rules and destroying letter heads.. Loss of commissary 60 d.	
11/30/64	Siskavick	Insolence, when making rounds to collect bowls & spoons. 4 sec. 30 d.	
12/14/64	Siskavick	Preaching and raving at the top of his voice to other inmates on #4 Sect. that the blackman is right in believing that God is a blackman.	#4 Seg. Indef.
12/22/64	Bruso	Passing food on #4 Section and misusing state blanket to put food into his cell. Strip cell-blanket & mattress 7 PM to 7 AM.	
2/2/65	Siskavick	Inmate came out of his cell to get mattress and blanket when he entered his cell I stepped over to close his door, he dropped his mattress and whirled around and took a swing at me, hitting me below the left eye. He was subdued by myself and officers Rivers & Sawner.	90 DAYS.
2/26/65		Reprimand & change assignment, loitering in the school Corr.	BAKES
3/16/65	30 days	Transf. to Seg. Taking papers f/ Tex sh., insolent to Correction Sgt., insolent during hearing.	Heavy Landy
7/17/66	15 days no yard.	Delaying mess run.	
1/31/67	Seg.	Anti-religious, anti-racial & advocating overthrow of U.S. Gov't. Also was running school for Muslims	Hues Collins
10/17/67		No yard for 15 days. Threatening officer.	
10/17/67		No yard for 15 days. Insolence. Inmate kicked the volley ball and when told not to kick the ball he said "can lay down"	Zelinski
12/4/67		REPRIMAND. Failing to shave clean.	Kennedy
3/7/68	None	Rel. & no Rec. Having a baldy haircut. 2 wks. start 3/8.	G. Panaris
3/13/68	48-4	Prod. in crt. this date (SO 47-4) hrg. of C.N. - Sustained Ret. to Queens.	
4/4/68	SO-64-2 Prod.	In Cay. Co. crt. 4/18/68 Writ H.C.	
4/8/68	None	KL 30 da. st. 4/10 Threatening an officer.	P. Rastay
4/18/68	74-2 Ret'd.	From court this date-Prior orders sustaining writs amended.	
4/29/68	SO 81-2 Prod.	In Queens Co, crt. 4/30/68-Vacature and further proceedings on charge of Rape 1st.	
4/30/68	None	Reprimand Arguing & throwing State food at inmate Florio #59999.	G. Panaris

Date	Time Forfeited	Charge	Officer
10/10/68	SO 195-3	Ret. from Queens Cty. crt. 10/10/68 - Resentence to same.	
11/17/68	15 days.	KL 15 days. Insubordination; insolence; cursing an officer st. 11/19 & challenging officer to fight with him on the gallery.	R. Evan
2/14/69	None	KL until cell is clean. Having dirty cell & 19 books that were not stamped.	Bacon
3/20/69	See report	Stealing cake; passed by all diner & then came back for cake.	D. Stave
3/20/69	None	KL 30 da. Creating a disturbance in mess hall at noon st. 3/30. meal.	M. Kary
5/6/69		KL UFO & no commissary or radio UFO refused to take Stanford Achievement Test.	McAnulty
6/13/69		KL 45 days. No radio or comm. 43 dys. continue KL UFO & no radio or comm UFO for above report.	Pautler
7/17/69		KL-29 das., No radio or comm 29 days, continue KL UFO & no radio or comm UFO, refused to take Stanford Achievement test.	Pautler
9/18/69		KL-31 days & no commissary or radio 31 days; for refused to (Of 7-17-69) take the SAT.	McClella
9/17/69		KL-30 days & no radio or commissary 30 days; continue KL and no radio or comm. U.F.O. KL from 8-19-69 thru 9-17-69 and no radio of Comm. for same period. for the report of 8-18-69 (refusing to take the SAT)	Pautler
10/10/69		NO TIME REMITTED BY PRISON BOARD	MB Seg.
10/17/69		KL from 9-18-69 thru 10-17-69 with no radio or comm. for the same period for the report of 9-17-69 (Refusing to take the S.A.T.). KL 30 dys., no radio or comm. 30 dys. CONTINUE KL UFO AND NO RADIO OR COMM. UFO.	McClella
11/16/69		KL from 10-18-69 thru 11-16-69 and no Radio or C omm. for the same period for the report of 10-17-69 - refusing to take the Stanford Achievement Test. KL 30 dys. No Radio or Comm. 30 days: CONTINUE KL UFO AND NO RADIO OR COMM. UFO.	Pautler
12-16-69		For report of 11-16-69 "Refusing to take the Stanford Achievement Test." KL 30 dys. and No Commissary or Radio 30 dys. and Continue KL UFO.	Pautler
12-24-69	10 dys.	Being abusive to SE Porter and throwing milk in his face.	Klein
1/15/70		KL 30 dys. and No Radio or Comm. 30 dys. & RELEASE: For report of 12-16-69 "Refusing to take the Stanford Achievement Test."	

CONTID ON BACK

Date	Time Period	Details	Officer
1/31/70	300 dys.	Trans. to H.B.Z. (Report No. 1) Fighting with Officer J. Raffety on the stairway between 6 & 5 Co. "A" Block. Assaulted Raffety with his fists, had to be forcibly separated.	Block
1/31/70		See Disp. for Report No. 1; Report No. 2; - Assaulted an Officer, Officer J. Raffety, with his fists.	Burns
1/31/70		See Disp for Report No. 1; Report No. 4- Being out of bounds and assaulting an officer. Assaulted the reporting Officer with his fist.	DeSanti
2/11/70		KL until hair grows out, check by Sgt. Preuss. Having head shaved.	Ris
3/19/70	10 dys no phone .	Talking after 9:30 p.m.	Watts
3/05/70	Trans. to Seg.	Conspiring to create a riot & taking part in disorder in mess hall.	Preuss
7/18/70	10 dys. KL	Refusing to sign a disposition slip and insolence.	Zawko
8/03/70	10 dys. LT	Excessive noise.	Peters
8/21/70	10 dys. LT	Causing a disturbance in the yard.	William
8/21/73	15 dys. no Y&M	Teaching the art of Karate	Sayers & Witte
8/26/70	10 dys. LT	Insolence and disrespect in the Dept. Supt. Court.	Egan
8/31/70	15 dys. loss	of Recreational privileges-Being disrespectful in disciplinary Court.	Profew
9/03/70	15 dys. KL	Being out of place	Hara
9/22/70	10 dys. no yd.	or movie - Traveling without a pass.	Haley
10/07/70	15 dys. KL	Recommend change of job-Disrupting the shop & insolence	Henry
10/15/70	20 dys. KL	Threatening an officer, insolent, disobeying an order, dirty cell	I
10/30/70		Recommendation for supt. Hearing/ Inmate was insolent, disrespectful threatening an officer.	
12/31/70		ASSIGN UNIT 14 RECALL 1-9-71. Insolent to Dept. Supt. at interview-refused to answer questions/	Wilmo
1/02/71		No Commissary 2 buys-recall. Using foul language to an C.O. Welch	
1/10/71		30 DAYS NO YD. & EARPHONES, Refusal to sign slip to send articles home. 7 days S.H.U. & RECALL.	Carte
1/22/71		RECALL: CONTINUE IN UNIT #14 & RECALL	
2/01/71		RECALLED: CONTINUE IN S.H.U. & RECALL	
1/29/71		MINOR INFRACTION: ACTION DEFERRED: Practicing Karate.	
1/31/71		" " : Talking after the 7:30 PM Bell.	
3/10/71		Counsel & Release Refused to Pkg. Room Officer an address for sending personal, which he is not allowed. out to	D.La
		CONT'D.	

Date	Time Portion	Description	Officer
5/21/71		DISP. FROM SUTLE RECORDED 4/2/71 SENTENCED TO TIME SERVED Inmate had inflammatory literature concerning the Black Movement in his cell as well as a code to use to send uncensored letters out of the institution	
4/24/71		NO CCMM 30DYS. & ASSIGN TO SHU 7DYS. & RECALL (Inmate was not assigned to SHU) Teaching karate in the No. Yard by using a punching bag. RECALL 5/4/71 RELEASED FROM JELL.	
5/14/71	90 DYS. LT	& Assign to Unit #14 for 60 days (Disp. from Supt. Proc.) on 5/21/71. Inmate was running in restricted area of the No. Yd. & when told to stop by the C.O. he told him to get out of the way or he would kill him. He refused to give the C.O. his name or cell location & threatened to kill the officer several more times before he was placed in his cell.	
6/16/71		15 Days NCM. PRIV. 30 DAYS NO YD. Inmate refused to face the rear of the elevator as ordered when being taken from Unit 14 to visit w/his attorney.	
6/25/71		Participating in Destructive incident in Unit 14 destroyed toilet bowl, sink, 2 mattresses & broke 7 windows.	Barcomb
7/29/71	180 dys. LT	& assign to SHU 60 dys. eff. 7/21/71 & pay for destroyed State Propt.	Rock
8/01/71		Minor Rept. DEFER ACTION: Talking & yelling between sections after evening silence bell.	
8/01/71		Minor Rept. DEFER ACTION: Talking until 1 A.M.	Carro Rock
		CHARGE #1 For creating a general disturbance in S.H. Unit #14 by preaching "black unity" and yelling in a loud voice after the silence bell and calling Correction Officers obscenities such as: "Get out of here you mother fucking pigs," cracker ass, & pig mother fucker. The following reports to substantiate the above charge:	
		10/19/71 C.O. W. R. Lintner	
		10/25/71 C. Lieut.. R. Fuller	
		10/26/71 C.O.'s J. Maloney, C. Caldwell, R. Harkness	
		10/27/71 C.O.'s R. Harkness, N. Rock, J. Maloney	
		11/01/71 C.O.'s W. Lintner, C. LaDUKE, J. Siskavich	
		11/08/71 C.O.'s A. Baker	
		11/10/71 C.O.'s W. Lintner, G. Bassett, D. LaVarnway	
		11/17/71 C.O.'s G. Bassett, W. Lintner (cont)	

1. Destroying state property, Ripping state mattress, report dated 6/26/71
B. Wing, C.O.
2. Absolutely refusing to comply with order from Mrs E. LeFevre, Assistant Deputy Superintendent instructing him to appear for Superintendent's Proceedings.
Report dated 7/29/71.
3. For attempting to violate rules governing legal mail by switching letters to avoid sending staffer out. Report dated 9/7/71, J.A. LeBednick, C.O.
4. For throwing food on gallery, urinating on gallery, throwing food on C.O. J. Carron because he was refused second helping of desert. Reports dated 7/11/71, M. Canning, C.O. 7/11/71, A. Bruso, C.O. 7/7/71, J. Carron, C.O.
5. For repeated violations for refusing shave, banging and yelling, and causing general disturbance by refusing to comply with rules governing behavior in Unit 14. Reports dated: 8/8/71-J. Lebednik, C.O., 8/15/71-J. Lebednik, C.O., 8/20/71-N. Rock, C.O., 8/22/71-J. Lebednik, C.O., 9/5/71-J. Lebednik, C.O., 9/5/71-M. Dubay, C.O., 9/9/71-M. Dubay, C.O., 9/12/71-J. Carron, C.O., 9/13/71-J. Siskavich, C.O.

10-7-71 Supt. Proceedings on above. 60 days SHU (Special).

Det. Loss of Priv. suspended
pending future behavior

30 days

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CHARGE #2

For threatening C.O.'s assigned on SH Unit #14 by taking karate stance, stating he wanted action after refusing to bathe and shave, and stating he would snatch heads off C.O.'s if they came near cell doors, and refusing to uncover head for night officers. The following reports to substantiate the above charge:

10/24/71 C. Sgt. R. Bell
 10/27/71 C.O.'s R. Duprey, A. Bruso
 10/31/71 C.O.'s R. Duprey, A. Bruso
 10/31/71 C.O.'s N. Rock, J. Maloney

CHARGE #3

For throwing eating utensils and food on gallery and creating general disturbance by yelling and pounding.

Following reports to substantiate above charge:

10/25/71 C.O.'s W. Lintner, C. LaDuke, G. Bassett
 10/25/71 C.O.'s J. LeBednik, R. Duprey
 10/25/71 C.O.'s J. LeBednik, R. Duprey
 10/26/71 C.O.'s J. LeBednik, A. Bruso
 10/26/71 C.O.'s J. LeBednik, A. Bruso, R. Duprey
 10/26/71 C.O.'s W. Lintner, J. Carron, G. Bassett, T. Lucas
 10/27/71 C.O.'s J. LeBednik, W. Babbie, A. Bruso
 10/28/71 C.O.'s J. LeBednik, A. Bruso
 11/10/71 C.O.'s W. Lintner, T. Kowalowski

CHARGE #4

For refusing to come out of his cell for Superintendent Proceedings on October 7, 1971. = Report to substantiate above charge: 10/7/71 C.O. Lieut. G. Hoy

12/30/71

Disp. for Superintendent Proceedings: 60 dys. SHU on Min Priv.
 last 30 dys. out of Min. Priv. to be SS pending inmates behavior.

9/02/72

Out of place & refusing a direct order. 14 dys. confine to cell. REVIEW.

Sgt. Sullivan

12/27/72

Min. infraction WARNED: went on FM sick call for non-emergency

CONT'D.

1/31/73	Buck	7 dys. KL Susp. using karate punches on punching bag.	
3/05/73		7 dys. KL & Rec. 3/17/73 on this and above report throwing food and garbage onto gallery	
5/11/73	Infract.	Refused a direct order from a Correction Officer to submit to a rectal examination.	Gardner
7/1/73		TAC ALLOW: 5-0-3 RESTORE:	WITHHELD: 1-75
		<i>LT in Content File - Comm. Office</i>	<i>CR 2/23</i>
5/31/73	G. King	Refused to have personal effects checked when returning to cell. Became aggressive w/officers.	
6/06/73	Adj. Comm	(Time served 7 dys. KL)	
7/16/73	R. Aiken	Was in disturbance area when it started.	Time serve
7-3-73	<i>n. Content</i>	<i>instructing inmates in karate and drilling in small yd. no Rec 10 days SS</i>	
7/25/73	<i>Andrew</i>	<i>did not come in for 10 days reported later for assault Reprimand</i>	
8-10-73	Fitzpatrick	Demonstrating karate in the big yard to other inmates no Rec. fr 8-10-73 SS of 7-8-73	10 days

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DEPT. OF JUSTICE

JUL 21 1975

NEW YORK CITY OFFICE

James J. Sheehan, Jr.
ATTORNEY GENERAL

